Public Utilities

Volume XLI No. 1 January 1, 1948

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Public Utilities FORTNIGHTLY

VOLUME XLI JANUARY 1, 1948 NUMBER 1

ARTICLES

FEATURE SECTIONS

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

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PUBLIC UTILITIES FORTNIGHTLY .. stands for Federal and state regulation of both privately owned and operated utilities and publicly owned and operated utilities, on a fair and nondiscriminatory basis; for nondiscriminatory administration of laws; for equitable and nondiscriminatory taxation; and, in general—for the perpetuation of the free enterprise system. It is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.

$1.00 *a Copy*
26 Issues a Year
Annual Subscription Price $15.00

Pages with the Editors

WE hope our readers will note with favor and approval some new features and physical details in connection with the appearance of PUBLIC UTILITIES FORTNIGHTLY during the year 1948. We trust that the bright arrangement of the cover will reflect a brighter arrangement of content in the months to come. In this issue we introduce our new department, entitled "Progress of Regulation," which will be given over to brief and popular digests of current decisions of courts and commissions in the field of public utility regulation. We shall endeavor to make the coverage somewhat more extensive, comprehensive, and intensive as compared with previous departmental previews of such rulings.

LIKEWISE, our readers will observe that there is a "new look" in length and scope as well as appearance of our financial department, "Financial News and Comment," under the by-line of our financial editor, Owen Ely. This has been made possible through the acquisition and transference to this magazine, beginning with this first issue of 1948, of material and data previously made available to only a limited number of subscribers in a special weekly letter service which was issued during the year of 1947 under the title *P. U. R. Utilities Financial Letter*. This specialized financial service proved so popular that the publishers feel it can be substantially and successfully incorporated into the FORTNIGHTLY itself, with its broader national circulation. And so we are pleased to announce the addition of this new and valuable financial feature which will henceforth be available to the readers of the FORTNIGHTLY.

FERGUS J. MCDIARMID

THE readers also will observe, in addition to new style headings and illustrations, the continued appearance of departments which have proved to be favorites with our readers, ranging from the one-year-old "Washington and the Utilities" to the old-timers such as "What Others Think" and "Remarkable Remarks," which are pretty nearly approaching the voting age.

IN the matter of feature articles, it is the intention of the publishers during the year 1948 to provide for readers of the FORTNIGHTLY a well-balanced, well-planned diet of well-written manuscripts by well-qualified authors. Bearing in mind that regulation is the loadstone of the FORTNIGHTLY's field of endeavor, it may be noted that the scope of these feature articles may seem more extensive than in the past. This is because regulation itself is inherently a dynamic process and continues to expand over the years.

ARTICLES in the FORTNIGHTLY can therefore be expected to expand accordingly. They will be designed to interest every contributory field of regulation, whether legislative, judicial, or administrative. They will be addressed frankly to the interest of every level of the regu-

PEOPLES UTILITY COMPANY

BILL ANALYSIS - Residential
PERIOD - Year 1946 RATE - R - 1

Kw.Hrs.	No.Bills	Consumption in Kw.Hrs.	CUMULATIVE No.Bills	CUMULATIVE Consumption in Kw.Hrs.	Consolidated Factor
0	1644	0	1644	0	0
1	575	575	2219	575	343920
2	489	978	2708	1553	687265
3	449	1347	3157	2900	1030181
4	429	1716	3586	4616	1372528
5	413	2065	3999	6681	1714506
6	415	2490	4414	9171	2056071
7	434	3038	4848	12209	2397281
8	454	3632	5302	15841	2737937
9	418	3762	5720	19603	3078199
10	458	4580	6178	24183	3418043
11	391	4301	6569	28484	3757429
12	437	5244	7006	33728	4096424
13	469	6097	7475	39825	4434982
14	467	6538	7942	46363	4773071
15	491	7365	8433	53728	5110693
16	537	8592	8970	62320	5447824
17	542	9214	9512	71534	5784418
18	549	9882	10061	81416	6120470
19	541	10279	10602	91695	6455973
20	605	12100	11207	103795	6790935
21	595	12495	11802	116290	7125292
22	607	13354	12409	129644	7459054
23	602	13846	13011	143490	7792209
24	654	15696	13665	159186	8124762
25	600	15000	14265	174186	8456661
26	658	17108	14923	191294	8787960
27	653	17631	15576	208925	9118601
28	734	20552	16310	229477	9448589
29	692	20068	17002	249545	9777843
30	726	21780	17728	271325	10106405
	290	451	130790	281885	37899547	56366457
	291	409	119019	282294	38018566	56430136
	292	409	119428	282703	38137994	56493406
	293	415	121595	283118	38259589	56556267
	294	412	121128	283530	38380717	56618713
	295	403	118885	283933	38499602	56680747
	296	377	111592	284310	38611194	56742378
	297	400	118800	284710	38729994	56803632
	298	384	114432	285094	38844426	56864486
	299	384	114816	285478	38959242	56924956
	300	396	118800	285874	39078042	56985042
301	350	16421	5313086	302295	44391128	59337278
351	400	11248	4203570	313543	48594698	61407098
401	450	7712	3266313	321255	51860011	62807061
451	500	5499	2605788	326754	54473799	63878799
501	600	6916	3773512	333670	58247311	65383711
601	700	3925	2534235	337595	60781546	66359846
701	800	2399	1793920	339994	62575466	67031466
801	900	1460	1234673	341454	63810139	67509139
901	1000	1026	973139	342480	64783278	67867278
1001	1200	1193	1299858	343673	66083136	68352336
1201	1400	607	781300	344280	66864436	68662036
1401	1600	409	609631	344689	67474067	68874067
1601	1800	232	391658	344921	67865725	69023123
1801	2000	176	331332	345097	68198857	69132857
2001	2500	232	510458	345329	68709315	69296815
2501	3000	97	261402	345426	68970717	69384717
3001	4000	76	260083	345502	69230800	69478800
4001	5000	38	167649	345540	69398449	69518449
5001	6000	11	59289	345551	69457738	69535738
6001	7000	7	45379	345558	69503117	69545117
7001	8000	4	29369	345562	69532486	69548486
8001	9000			345562	69532486	69550486
9001	10000	2	18842	345564	69551328	69551328

ILLUSTRATION OF TYPICAL BILL ANALYSIS

DATA OF THIS TYPE—analyzing a utility's bills—often discloses certain trends which are of considerable value in planning rate and promotional programs.

Note the various tabulations that have been made for each kilowatt hour—from 0 to 10,000.

Many utilities throughout the country have statistics of this type prepared for them, outside their own offices, on equipment especially designed for this specific purpose. Through this unique service your bills can be analyzed in half the usual time, and at half the usual cost.

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lated utility industries, themselves, from the executive front office through staff officials, to the employees in the field and at the commercial counters. Financial and economic topics, sure to prove of such vital concern to operating utilities in the year ahead, will be a special target of our editorial planning.

REGULATION, in other words, is no longer confined to Washington and the state capitals. Nor can it even be confined to the law or account books or the engineers' reports. Modern regulation finds its reflection in many places—from the wind-swept tower on the hilltop to the flashlight beam of the meter reader. Even executives and officials of nonutility industries are finding themselves confronted with problems of regulation, which in many ways parallel those to be covered in these pages during the coming year.

A WORD about several of the features in the current issue: FERGUS J. MCDIARMID gets us off to a good start for 1948 with a penetrating analysis of probably the most difficult financial problem facing the utilities today — raising money for plant expansion. MR. MCDIARMID, who is noted for his sound and thought-provoking articles about public utility finance and economics, is the second vice president of the Lincoln National Life Insurance Company, Fort Wayne, Indiana. He is a graduate of the University of Toronto, and has specialized in actuarial mathematics and utility investment from the life insurance point of view almost continuously since entering the insurance business with his present organization three days after receiving his university degree.

* * * *

ALFRED M. COOPER, who discusses the serious problem of water supply in the Colorado river basin, is a professional writer of business articles who generally specializes in personnel matters. He originally taught at Kansas City public schools and at the University of Southern California School of Government. For many years he supervised employee training for a group of public utility companies in the South and Middle West, and for other industries. He has recently turned his attention to problems of navigation (from a small boat owner's point of view), which may explain his interest in the Colorado river. Navigating the Colorado in a small boat or any boat would be a problem indeed. He now makes his home in Banning, California.

ALFRED M. COOPER

* * * *

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

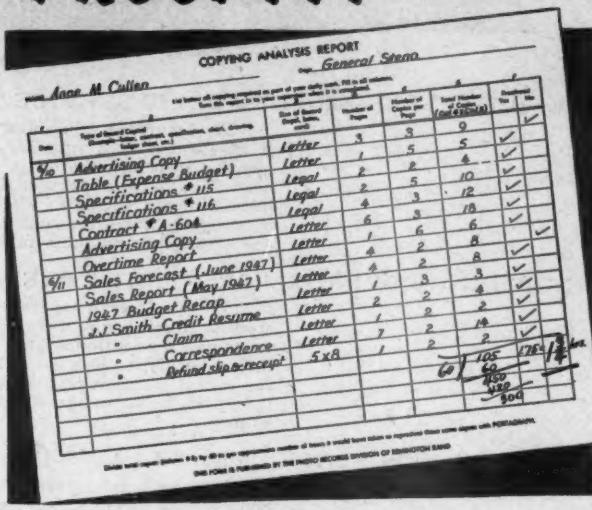
THE resale of electric service by landlord to tenant, at a flat charge contained in the rent, represents discrimination between electric users because the same charge is collected regardless of the amount of use, according to the Georgia commission. (See page 15.)

THE Federal Power Commission holds that it does not have jurisdiction over the merger or consolidation of an electric distribution system of a municipality into the facilities of an electric company. (See page 18.)

THE next number of this magazine will be out January 15th.

The Editors

Here's PROOF . . .



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6/10	Advertising Copy	Letter	3	3	9		✓
	Table (Expense Budget)	Letter	1	5	5	✓	
	Specifications #115	Legal	2	2	4	✓	
	Specifications #116	Legal	2	5	10	✓	
	Contract #A-604	Legal	4	3	12	✓	
	Advertising Copy	Letter	6	3	18	✓	
	Overtime Report	Letter	1	6	6		✓
6/11	Sales Forecast (June 1947)	Letter	4	2	8	✓	
	Sales Report (May 1947)	Letter	4	2	8	✓	
	1947 Budget Recap	Letter	1	3	3	✓	
	J.J. Smith Credit Resume	Letter	2	2	4	✓	
	" Claim	Letter	1	2	2	✓	
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"THE NEED FOR SELLING THE PUBLIC SERVICE"

»

With current talk about shortage of power suppl it may come as a surprise to some readers that th electric utility industry is faced with a problem promoting sales of service. This article, by S. B. Wi liams, former editor of *Electrical World*, shows wh it is not too early for such companies to start trainin and strengthening their sales organizations.

"SINKING-FUND PROVISION FOR UTILITY PREFERRED ISSUES"

»

The confused market on utility securities in rece months suggests the use of the sinking-fund provisio to tempt institutional and other investors back int utility securities in great volume. This is an account the recent trend in this direction by John P. Callaha the utility news and financial analyst of *The New Yor Times*.

"OUTLOOK FOR NEW STATE UTILITY LAWS IN 1948"

»

The author of this article, Bethune Jones, is professional analyst of legislative happenings an trends in the various state capitals. For an "off year a surprising number of state legislatures will meet i 1948 sessions.

"HOW IS THE LOBBY LAW WORKING?"

»

If lobbying does not pay those who buy it, it a least pays the lobbyists. Larston D. Farrar, Washing ton correspondent and special feature writer, gives a interesting description of how the new lobby registra tion law is working out for Congress, for the lobbyist and for the public.

Also . . . ***Special financial news, digests, and interpretations of court and commission decisions, general news happenings, review, Washington gossip, and other features of interest to public utility regulators, companies, executives, employees, investors, and others.***

Remarkable Remarks

"THERE NEVER WAS IN THE WORLD TWO OPINIONS ALIKE."—*Montaigne*

WALTER EVANS
Vice president, Westinghouse Electric Corporation.

"Let's bear in mind that as dollars invested in research planning go up, the need for wartime expenditure in lives and dollars goes down."

HARRY S. TRUMAN

"In contrast with its use in totalitarian nations, radio in America has developed as a servant of the people, rather than as a servant of the government."

CHARLES A. HALLECK
U. S. Representative from Indiana.

"The cost of government must be reduced to a reasonable level. By reducing the cost of government the American people can be given relief from excessive and stifling taxes."

HAROLD W. DODDS
President, Princeton University.

"A nation whose citizens can read and write but whose reading tastes do not rise above the level of desire for the excitation of adolescent emotions is easy game for dictators."

HENRY J. TAYLOR
Journalist and author.

"America is a world power, but we became a world power because we were strong at home, and in no other way. We must remain so, or there is no other hope for world peace."

LAWRENCE FERTIG
Columnist, New York World-Telegram.

"You cannot have political democracy in an economically totalitarian state. . . . Economic totalitarianism leads to political totalitarianism just as economic freedom leads to political freedom."

HENRY CABOT LODGE, JR.
U. S. Senator from Massachusetts.

"It is obvious that unless every section of the United States is functioning at its highest efficiency our country cannot meet the great demands which are going to be imposed upon us by conditions abroad."

WILLIAM M. ALLEN
President, Boeing Airplane Company.

"To assure the American people of quality aircraft, of design advancement superior to that of other nations, the national procurement policy should be based on the American system of free competition."

DAVID E. LILIENTHAL
Chairman, Atomic Energy Commission.

"In an industrial sense nuclear power's ultimate importance can hardly be exaggerated, but I want to underline the word ultimate, for the use of atomic energy for power production is not just around the corner or anywhere near the corner."

JAMES J. DAVIS
The late U. S. Senator from Pennsylvania.

"Labor makes the present day safe—but the present day only. Capital safeguards the future."

ROSWELL MAGILL
Partner, Cravath, Swaine & Moore.

"Taxes always operate as a brake upon the economy and our individual taxes remain at almost the war peak. We need a more favorable tax climate in the interests both of satisfactory production and of satisfactory Treasury receipts."

C. WILSON HARDER
President, National Federation of Small Business, Inc.

"Small, independent enterprise, with its tremendous flexibility and intense drive, has well served the national interest in and out of crisis. It must not be deprived of the privilege of continuing this service due to artificial restrictions on its powers."

P. J. NEFF
Chief executive officer, Missouri Pacific Lines.

"The railroads, on which the country must depend in times of peace as well as in war, must have their situation stabilized, not by government subsidies but merely through the process of having an adequate return so that they may provide modern, dependable, and economical transportation."

JESSE P. WOLCOTT
U. S. Representative from Michigan.

"Socialism *versus* democracy, Capitalism *versus* managed economy, regimentation *versus* free enterprise. These are the issues which must be met squarely; these problems must be solved by the American people before we can ever hope for economic and social stability in America and peace through the world."

HENRY J. KAISER
Industrialist.

" . . . tax laws should be reformed permanently in such a way as to encourage the small businessman and risk-taker to go ahead into new ventures that will build an ever more flourishing economy. This would mean more and better things for you to buy—and cheaper. Let's not soft pedal that. The real issue is to expand plants."

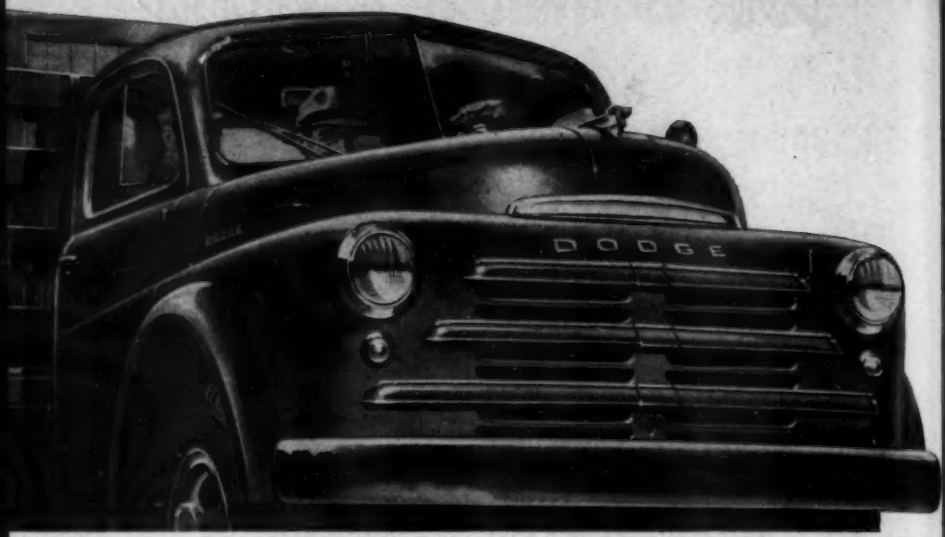
HERBERT HOOVER
Former President of the United States.

"We in the Western Hemisphere are demonstrating every day not only that personal liberty and representative government are the only hope for moral and spiritual progress. We are also demonstrating that free enterprise is the only road to productivity. Today only the free enterprise countries are free of starvation and cold."

EDITORIAL STATEMENT
The Journal of Commerce.

"The more aggressive a union is in seeking participation in management, the more necessary are contract clauses that protect the authority of management against encroachment. Failure to safeguard managerial authority can badly hamper a business in keeping abreast of technological improvements and increases in efficiency in its industry."

NEW TRUCKS

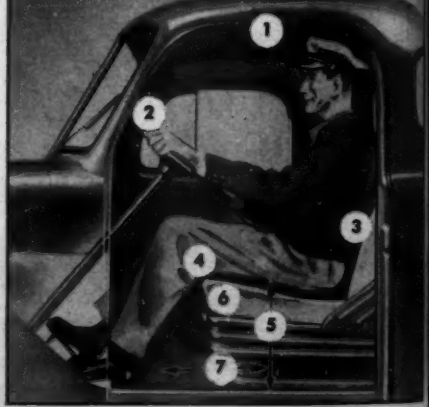


NEW Styling

These *new* Dodge *"Job-Rated"* trucks are wide, massive trucks representing DESIGN with a PURPOSE . . . trucks combining appearance with comfort, safety, performance, economy, and ease of handling.

NEW COMFORT

1. **PLENTY OF HEADROOM.**
2. **STEERING WHEEL** . . . right in the driver's lap.
3. **NATURAL BACK SUPPORT** . . . adjustable for maximum comfort.
4. **PROPER LEG SUPPORT** . . . under the knees where you need it.
5. **CHAIR-HEIGHT SEATS** . . . just like you have at home.
6. **"AIR-O-RIDE" CUSHIONS** . . . adjustable to weight of driver and road conditions.
7. **7-INCH SEAT ADJUSTMENT** . . . with safe, convenient hand control.



LL THIS... *and more...with the* NEW DODGE

REALLY NEW!

NEW Tractors and other High Tonnage Models!

You'll find, in these *new* high tonnage models, many *exclusive* advancements: Strong, durable metals and alloys . . . precise machining, and a much wider range of equipment. Engines have cost-reducing sodium-cooled valves, and stellite-faced exhaust valves and seat inserts. Other outstanding features include sturdy 5-speed transmissions; rugged 12" and 13" clutches; smooth, safe brakes—the finest in the trucking industry.

NEW All-Weather Ventilation

You drive in comfort whether it's 10° below or 100° above. Available is an ingenious combination of *truck* heater, defroster vents, vent windows, cowl ventilator, and a new fresh air intake from behind the front grille. It's the finest "All-Weather" heating and ventilating system ever installed in a truck cab.

NEW "Pilot-House" Cabs with all 'round vision

Note the tremendously increased *vision* of these cabs. Windshields and windows are higher and wider. New rear quarter windows add still more to vision, and to safety. With this increased glass area throughout, you get "Pilot-House" vision in *all* directions. With welded all-steel construction, they're the *safest* cabs built.

...GE Job-Rated" TRUCKS

Now on Display
SEE YOUR
DODGE DEALER

"Highway" for Water

A water main for Buckley, Washington! It was a cliff-side job for two *International* Diesel crawlers to clear the right of way and cut a narrow road for the ditch. The TD-9 (in the foreground) and TD-14 made short work, at low cost, of this job of pioneering a "highway" for water.

Consult your International Industrial Power Distributor for the facts about these tractors and their application to your operations.

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INTERNATIONAL POWER

CRAWLER AND WHEEL TRACTORS • DIESEL ENGINES • POWER UNITS

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Utilities Almanack

JANUARY

1	Th	¶ *Happy New Year, 1948!*
2	F	¶ *Georgia Association of Broadcasters will hold winter meeting, Augusta, Ga., Jan. 19, 20, 1948.*
3	Sa	¶ *American Water Works Association, New York Section, will hold mid-winter luncheon, New York, N. Y., Jan. 20, 1948.*
4	S	¶ *American Gas Association, Home Service Committee, will hold meeting, Chicago, Ill., Jan. 21–24, 1948.*
5	M	¶ *American Society of Civil Engineers will hold annual meeting, New York, N. Y., Jan. 21–24, 1948.*
6	Tu	¶ *Canadian Construction Association will hold annual meeting, Quebec, Canada, Jan. 25–28, 1948.*
7	W	¶ *American Road Builders' Association, and its Divisions will hold annual meeting, Washington, D. C., Jan. 26–28, 1948.*
8	Th	¶ *Minnesota Telephone Association will hold convention, St. Paul, Minn., Jan. 26–28, 1948.*
9	F	¶ *American Institute of Electrical Engineers will hold winter general meeting, Pittsburgh, Pa., Jan. 26–30, 1948.*
10	Sa	¶ *Eighth International Heating Ventilation Exposition will be held, New York, N. Y., Feb. 2–6, 1948.*
11	S	¶ *National Association of Home Builders will hold convention, Chicago, Ill., Feb. 22–26, 1948.*
12	M	¶ *Canadian Electrical Association begins conference, Quebec, Canada, 1948.* ¶ *NRDGA begins annual convention, New York, N. Y., 1948.*
13	Tu	¶ *Texas Telephone Association will hold convention, Galveston, Tex., Mar. 15–17, 1948.*
14	W	¶ *New England Gas Association will hold annual meeting, Boston, Mass., Mar. 18, 19, 1948.*


Bell's New Radio Relay Terminal
As seen on New York city long-distance headquar

Public Utilities
FORTNIGHTLY

VOL. XLI, No. 1 JANUARY 1, 1948

The Utilities Face a Big Financial Problem

Analysis of existing influences bearing on sales of issues from both the large and small investor standpoint, and suggested techniques for promoting marketability of various types of securities.

BY FERGUS J. McDIARMID*

THE public utilities of this country have a financing problem ahead; and the way things are shaping up, it promises to be a tough one. From reading the prospectuses describing a large number of recent new security issues, one gets the impression that many electric companies plan gross additions to their property accounts during the five years 1947-1951 which will cost an amount equal to about half the total dollar cost of their existing plants. In some cases the cost will be relatively greater still.

The telephone industry likewise is launched upon a construction program of similar relative magnitude, designed to meet the demands for service and to render that service as far as possible automatic. A number of major new natural gas pipe lines are under construction, and more are planned.

Altogether the total cost of this 5-year program is likely to exceed $10,000,000,000 and possibly considerably more. Part of it will be financed from internal sources, such as depreciation allowances and retained earnings; but most of it will have to come from the sale of additional securities, and it

*For personal note, see "Pages with the Editors."

is that matter which concerns us here. For the first time since the decade of the '20's the utilities face the problem of raising a large amount of new capital from the investing public, and under conditions considerably less favorable than was the case even a short time ago. Let us consider some of these conditions.

The Capital Markets Have Changed

SINCE the break of the boom in 1929 a very large volume of public utility securities has been sold to the American public. However, to a large extent this has represented an exchange of old securities for new ones through a refunding process. It was part of the trend toward cheaper and cheaper money. The volume of outstanding public utility securities remained nearly the same, and only a fairly small proportion of the new securities sold brought new capital into the industry. Until after World War II additions to plant were financed mostly from depreciation accruals and retained earnings. However, matters have now entered a more acute phase, thanks to the accelerated demand for service and also to the fact that equipment now costs in dollars from 50 to 100 per cent more than before the war.

Certain important changes have taken place in the capital markets of this country since the utilities last raised new money on a large scale. These changes reflect the increased institutionalization of savings. To a rather large extent financial institutions, such as life insurance companies and savings banks, have replaced well-to-do individuals as suppliers of capital. This is particularly true of the type of capital required by the public utility industry; namely, capital looking for a modest but reliable and steady rate of return but with a limited outlook for appreciation in values.

Securities which have these qualifications can, under present income tax schedules, have but very limited appeal to the wealthy individual investor. That person is mainly interested in two types of securities—tax-exempt municipal bonds, and securities which offer a chance for large capital appreciation. The senior securities of public utilities, bonds and preferred stocks, which normally make up nearly three-fourths of their total capital structure, can have but small appeal to such individual investors; and their common stocks, except under unusual market conditions, can have no more than a very limited appeal.

IT is a fact well known in financial circles that as part of the extensive refunding process referred to, which got underway in 1935, the bonds of utilities began to flow heavily into the portfolios of financial institutions—most particularly those of the life insurance companies. It is a fact that at this time well over half of the bonds of the major divisions of the utility industry—electric, telephone, and gas—are now held by life insurance companies. Also it is well understood by the investment banking fraternity that in the case of a utility bond issue of any size, unless some of the major life companies subscribe, the issue is almost sure to be a market failure. And in recent months there have been a number of such failures, and some fingers have been severely burned thereby.

There can be little doubt that until

the financial fortunes of the utilities decline considerably below their present levels these utilities will be able to sell their bonds to financial institutions. For one thing, the life insurance companies will continue to have a lot of money to invest. Their funds are increasing at a net rate in excess of three billion a year, which amounts at this time to probably over one-fourth of the net savings of all individuals in the country. This is a lot of money, even in relation to the capital requirements of the utilities.

THERE are, however, plenty of signs that the interest rates the utilities will have to pay on their bonds will be higher in future than in the recent past. The recent $100,000,000 issue of Pacific Telephone & Telegraph established an interest cost at least ½ per cent higher than a security of this quality would have carried a year ago. The most ready explanation for this swing has been a sharp decline in savings in the country in the face of a greatly expanded demand for capital, together with a decline in the amount of work a dollar of savings will accomplish. From the high level of savings achieved during the war, these have declined sharply to a historically low percentage of the national income and to a level in dollars only about one-third of the wartime high. High prices, which have cut into the savings of those who normally save, have probably played a part in this decline. On the other hand, the demand for capital, driven up by high prices and deferred demand, has risen.

High real estate prices have greatly expanded the demand for mortgage money, and various divisions of industry are also spending a lot of new money. High prices have greatly increased the working capital requirements of all divisions of industry and business. For one thing, it costs a lot more to carry inventory now. Need we look farther than such supply and demand factors for the cause of the current interest uptrend?

The Bloom Is Off the Preferreds

THE real crux of the utilities' financing problem does not lie in the raising of bond money. It has to do with the matter of raising equity money to balance the fixed interest part of capital structures. During the last three or four years the utilities have enjoyed a field day in selling preferred stocks on a basis which was extremely favorable to them. This may have created some illusions with respect to the ease with which the industry could raise this type of capital to take care of new construction needs. There is reason to believe that this phase of public utility financing is over.

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In the first place, it was made possible by the willingness of financial institutions, particularly life insurance companies, to absorb large volumes of these preferred stocks. Bond yields had gone to extremely low levels, and investing institutions sought to get a better yield by placing a limited part of their funds in preferreds. Like the Prodigal Son they were so hungry for yield that they would fane have filled their bellies with the husks that the swine did eat. Now that the fatted calf of higher bond yields is at hand, the husks no longer appeal. Besides, some of the husks so recently devoured are giving them a bit of a bellyache. While these institutions can carry adequately secured bonds at amortized values, they have to carry stocks at market prices; and utility preferred stocks as a class have recently slipped rather severely in the market, thereby eating into the surplus position of institutions owning them. For this reason many security buyers for financial institutions would rather not be reminded at this time that such a thing as a public utility preferred stock exists.

Also life insurance companies, since they must carry stocks at market, must limit them to a small proportion of their total assets. As a practical matter this proportion usually does not exceed 5 per cent, although the law in many cases permits a higher proportion, that of New York state permitting 10 per cent of a life company's assets to be invested in preferred stocks. Many life companies are now bought up in preferreds to a point which represents about their practical limit. This view has been solidified by the recent market performance of the preferreds.

Also the great bulk of utility preferreds recently sold was a matter of refunding. The old holders were offered a choice of taking a new low-yielding stock in place of the old stock, or taking the money, with a hungry group of financial institutions standing by to practically underwrite the issue.

This type of moral suasion is not possible when a preferred stock issue represents new money. As was pointed out above, a modest fixed rate of return has little appeal to the well-heeled individual under today's tax conditions. To sell such stock in small lots to people of moderate means is an expensive proposition, likely to cost several points instead of the narrow profit margins recently prevailing. Also more attractive coupon rates would no doubt be necessary to do so.

Common Stock Financing Is Expensive

At the time this is written an extensive group of common stocks of electric utilities is selling over a range of between 7 and 18 times current annual earnings, with many stocks of good companies selling around 10 times earnings. The basis on which these sell is determined to considerable degree by the type of capital structure. When a common stock represents a small layer at the bottom of the capital structure, the stock tends to sell at a low multiple of earnings. When a large part of the capital is represented by common, the ratio of selling price to earnings tends to be considerably higher. At the present time a number of apparently well-founded utility common stocks can be bought to yield nearly 7 per cent on the basis of current dividends. Add to this the relatively

Effect of High Prices

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high cost of selling utility common stocks, which must be placed largely with individuals. Clearly the raising of common stock money by utilities in today's money markets is far from a cheap and easy process.

Why do investors take what appears to be rather a cool view of public utility common stocks? On the basis of the record it seems that they must be bought largely for income, with only limited hope of capital appreciation. Look, for example, at the record of the private electric utility industry over the past seventeen years. In that period the number of customers served has increased by half, installed generating capacity is up by one-third, and power output has much more than doubled. Yet in spite of the substantially larger real investment and much greater service rendered, and in spite of the depreciation in the value of the dollar, the total number of dollars earned by the industry for its security holders is about the same now as in 1930, or at least very little higher. If more money is now available for stockholders, it is because it has been taken largely from bondholders through refunding in a cheap money period. The over-all rate of return on the actual investment in the industry has declined.

THE telephone industry has had a parallel experience. In spite of more than a 50 per cent increase in the number of telephones and plant investment since 1930, and a doubling of revenue, the net operating income expressed in dollars is today probably lower than in 1930. In fact the recent dip in telephone earnings, caused largely by wage increases, has been rather alarming. The relatively large wage bill in that industry is an adverse feature from the point of view of most equity investors. Even from the point

of view of holders of first lien bonds, the credit of the telephone industry is probably not quite what it was a little while back. When funded debt of a telephone company goes from $25 to over $75 per telephone in the course of a few years, the trend is sufficient to make the bondholders sit up and take notice—to say nothing of the stockholders—and that is what has been happening.

Also the investor is likely to note the abnormality of having low earnings at a time when telephone toll revenues are running at over three times to the pre-war level, and demand for all telephone service is at an all-time high. What will happen to earnings when toll revenues shrink in some future depression and the folks, particularly out on the rural lines, start to give up the service as they did before? We hope it won't happen again, but what if it does? This is the period in the cycle when telephone earnings should be abnormally high rather than abnormally low if the industry is to attract the capital it requires.

Altogether potential investors in the utility industry are wondering what effect the huge new additions to plant now taking place will have on dollar earnings. Will dollar earnings increase in proportion to the additional dollars invested in plant? That simply has not been the trend since 1930, which is the main reason why the raising of common stock capital by the industry is currently a rather expensive proposition.

Some Financing Techniques

As was stated before, the main source of investment capital of the type which seeks mainly a rate of return rather than capital appreciation is the financial institutions, and particularly the life insurance companies. How can these be interested in contributing to the lower half of the capital structure of the utilities, to that part which occupies a position junior to the mortgage bonds, or in some cases mortgage bonds and debentures?

At the present time the chance of such institutions purchasing any large additional volume of the traditional type of utility preferred stocks seems out of the question. I refer to the type which merely offers an income in perpetuity, or until called, but no systematic repayment of principal through a sinking fund or otherwise, and no conversion privilege whereby the preferred stockholder has a chance to share in the good fortunes of the enterprise. The last sizable issue of this type offered dropped 7 points in the market, after having been originally offered to the public on a 4¼ per cent basis; and it was the obligation of a fairly strong electric utility.

There is a fairly good chance that utilities might reclaim the interest of institutional investors in their preferreds by concessions as to sinking funds or convertibility. It is a noteworthy fact that industrial preferred stocks, which generally carry a sinking fund, have held up much better during the recent market weakness than utility preferred stocks, which hardly ever have sinking funds. A sinking fund enables the investor to envisage an ultimate termination of his commitment. For example, a 2 per cent annual sinking fund means complete amortization over fifty years, but an average term for the investment of only twenty-five years. That is a lot different than an

investment in perpetuity. The operation of a sinking fund also provides market support for an issue.

WE have all heard the argument that utilities cannot afford sinking funds in preferred stocks, as theirs is permanent capital, etc. However, the insertion of such a provision does not mean a higher total cost of preferred stock financing, but merely a greater volume of such financing over the years to replace preferreds retired through sinking funds. Certainly if the utilities hope to interest such investors as life insurance companies in their preferred stocks at a dividend cost at a reasonable level, they had better seriously consider the idea of sinking funds. And any sinking fund less than 2 per cent per annum is not very significant in enhancing the market appeal of a preferred.

Another method of heightening the investment appeal of preferred stocks is by making them convertible into common. Such a provision enables a preferred stockholder to benefit if the company prospers and the common climbs in value. However, in the present market for utility securities, and in view of the limited prospects for an increase in utility earnings, the conversion price would have to be very little above the existing market price to create substantial additional investor appeal. It is noteworthy that in recent weeks two utility preferred stock issues, roughly comparable as to quality, were both brought out a day or so apart from each other. One was sold on a 4.4 per cent yield basis but was convertible into common. It was an immediate sellout. The other came on a 4.5 per cent yield basis but was not convertible. It sold slowly and has since dropped in the market seven points below its offering price.

AN additional financing device, which is likely to be much used in the period ahead, is the debenture convertible into common stock. A number of major utilities have used this technique on a large scale, including American Telephone and Telegraph and Commonwealth Edison. Such debentures are usually offered at a time when the sale of a very large amount of common stock on a favorable basis to the utility would be difficult—which description probably applies to the present time. Such debentures are frequently offered to existing stockholders and with the conversion price below the current market price of the stock, which causes the debentures to sell at an immediate premium.

Such convertible debentures usually have a relatively short term of ten or

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fifteen years. Since they are evidences of debt and can usually be carried at amortized values, they can be purchased in large quantities by institutional investors. Their sale of course does increase the proportion of debt in a utility's capital structure. However, their ultimate conversion into common is contemplated, and in the meantime the carrying charge of the debentures is small. Their sale really amounts to an attempt to sell common stock as cheaply and unostentatiously as possible. Who knows what the sale of over $300,000,000 of American Telephone and Telegraph stock all at one time would do to the market for that stock? Yet an equal volume of convertible debentures has caused no more than a tremor in the market.

It is entirely likely that in the period ahead the convertible debenture is going to be a favored medium for meeting the financial requirements of the utilities as applied to the lower half of their capital structures. To this end the regulatory authorities will probably have to permit an over-all indebtedness considerably in excess of the 50 per cent of capital structure at which they have been aiming in recent years. During periods of a buoyant common stock market these debentures will tend to be converted on a large scale as they will sell at a price geared to the common stock and be carried up marketwise to a level where they will bear a large part of the risk of market fluctuation of the common. Under these conditions their conversion, in order to share in the much higher rate of return obtained on the common, will become attractive; and as conversion takes place the balance between debt and equity securities will be restored.

A fourth method by which utilities may obtain the use of capital from institutions is by leasing such items of real estate as garages, service buildings, and office buildings from them. This method of course applies only to a small fraction of a utility's total capital requirements; but in view of the present condition of the capital markets, it should not be entirely ignored; and a number of utilities have already shown marked interest in it. This type of financing was described in detail by the writer in an article in the PUBLIC UTILITIES FORTNIGHTLY number[1] of August 28th last.

Utilities Must Be Allowed to Earn

Over the past dozen years, under the influence of declining money rates, ideas as to what constitute a fair rate of return for a public utility on its property investment have been declining. The writer has to admit that he shared in this trend of thought. It did seem that when the cost of bond money got to a level of 2¾ per cent or lower and preferred stock money to 3¾ per cent or lower, and when utility common stocks were selling at a rather high ratio to earnings, an over-all return of 6 per cent on the investment required a little defending.

It is time for this trend of thought to reverse itself. For reasons discussed above the cost of money has been increasing sharply and may very well continue to do so. High-grade utility bonds now must be sold to yield over ½ per cent more than was the case a year and a half ago; and the yield on public utility preferred stocks, if in-

[1] "Financing by Lease," Vol. XL, No. 5, page 278.

Cost of Electric and Telephone Equipment

"EQUIPMENT needed to deliver a given number of kilowatt hours to customers, or render telephone service to a customer, now costs over 50 per cent more than before the war and occupies an accordingly larger place in the capital structure on which a return must be earned. The current upward trend in the cost of money has compounded the effect of price increases."

deed they can be sold at all, has stiffened even more than the yield on bonds. Many utility common stocks now sell at no more than 10 times earnings, and some sell for as little as 7 times. In the light of these facts and current trends, 6 per cent looks like about the minimum yield a utility can earn on its investment and still attract the new capital required to render service. In some cases the necessary return may be even higher, when circumstances require financing on less favorable than average terms.

AND it is quite necessary that the public utility industry, which is a growing and entirely essential industry, be allowed to maintain the financial health required to raise the new capital which it desires. The first sign of a decline in such health will be exhibited by inability to raise money except through the sale of bonds. This of course would result in an unbalanced capital structure, so that sooner or later even bond financing would be denied, except on exceedingly stringent terms. This is what happened to the railroads during the '30's, but the railroads were a relatively mature industry, with only small requirements for new capital from outside. The utilities, on the other hand, still have very large outside capital requirements, so their plight would be much more serious. The ratio at which utility common stocks are now selling in relation to earnings may very well indicate that the situation is already somewhat critical.

Certainly the effect of rising costs on the industry can hardly be other than adverse. Equipment needed to deliver a given number of kilowatt hours to customers, or render telephone service to a customer, now costs over 50 per cent more than before the war and occupies an accordingly larger place in the capital structure on which a return

must be earned. The current upward trend in the cost of money has compounded the effect of price increases. Also the cost of fuel and labor is up sharply. The only saving factor, of course, has been the growth trend, which has enabled dollar profits to remain about constant (except in the telephone industry) in the wake of a sharp increase in gross.

For the authorities which regulate public utility earnings, all of this should have clear meaning. The cycle of rate cuts which has characterized the whole history of the electric industry has probably come to an end except in a few unusual situations, at least until the present outlook changes radically. We may not be far from the point where electric rate increases, even to residential customers, may be called for in some instances. In the case of the telephone industry a sharp increase in exchange rates is necessary if the formerly high credit of that industry is not to slip badly and in a hurry. Also some new rate techniques will probably be required to cushion the effect on earnings of a sharp decline in toll revenues.

Summary

THIS is probably the type of article which should be summarized. The utilities have the problem of raising during the next few years a much larger volume of money than they have ever raised in an equal period before. The high cost of new equipment will cause an expansion in capital structures out of proportion to the increase in the amount of physical plant added.

Since the last period, during which the industry had to raise a large amount of new money from the public, the capital markets in this country have undergone a substantial change. Investment funds which are interested in mainly a rate of return rather than tax exemption or capital appreciation are now largely in the hands of financial institutions, of which the most important are the life insurance companies. Wealthy individuals, because of income tax considerations, are now mainly interested in tax-exempt municipal bonds or in securities which promise a chance for large capital gains rather than current income. Generally speaking, utility securities offer only limited chance for capital gains and no tax exemption.

THE utilities will probably have no great trouble raising debt capital by selling bonds to financial institutions, although at a somewhat higher interest cost than they have been used to during the last year or so. Their real problem will be to balance the upper half of their capital structures by the sale of equity securities. The traditional type of utility preferred stock, having no sinking fund or conversion feature, has exhausted its appeal to institutional investors, except possibly on the basis of a quite high dividend rate. Four financial media suggested to appeal to institutional investors are preferred stocks with substantial sinking funds, convertible preferreds, convertible debentures, and the lease of property from institutions. Of these the convertible debenture, while it means a temporary increase in debt structure, is likely to bring in the largest volume of new funds with the least effort.

The recent pronounced upturn in cost of financing, plus much higher plant and operating costs, probably

spells the end for the time being of electric rate cuts; and ideas as to what constitutes a fair rate of return on utility property should probably be revised upward.

In the case of the telephone industry higher rates are especially required to prevent a sharp and rapid decline in the ability of that industry to raise the capital it needs.

Weakness of Planned Economy

"IT is private Capitalism which has raised a young, poor nation (the United States) to be the richest nation on earth, and it is only free enterprise which can release the latent energies of any nation, no matter how poor, to develop its resources and its man power to the fullest extent.

"The tragic situation in practically every Socialist and Communist country in the world definitely refutes the unproved theory that Socialism is efficient. In every one of these countries —Britain, France, Czechoslovakia, etc.—is confusion and lack of production accompanied by a growing lassitude on the part of the workers and managers alike. Black markets are rampant.

"Another reason for the miserable showing of planned economies is that every decision by the national planners becomes a national calamity if it is wrong. Under a free enterprise system, when producers make bad judgments they suffer a loss or go broke. Under a controlled system, bad judgment is forced upon all producers with disastrous results to the whole economy.

"The charge that Socialism is efficient and free enterprise wasteful is essentially curious in the light of recent history. It was not a Socialist or Communist system that became the 'arsenal of democracy' and brought Hitler down. It was the United States under private Capitalism. And it is the United States under private Capitalism which is spending billions in American production to shore up the tottering Socialist countries of Europe while they, in turn, express displeasure at our system and doubt as to its soundness and endurance. Here is irony with a vengeance!

"No country—not even the United States—is rich enough to survive the inefficiency and wastefulness of Socialism, which is an intellectual dream that must be paid for by the sweat of everyone who works. Private Capitalism, on the other hand, has proved itself efficient. It has increased the real earnings of every worker more than fourfold in less than ninety years in this country—despite the decrease in working hours from nearly seventy to forty hours per week. In addition, it has preserved the liberty of the individual. These are facts which no amount of theorizing can refute."

—LAWRENCE FERTIG,
Columnist, New York World Telegram.

Washington Utility Outlook For 1948

Analysis of the possible consequences of new developments in Congress and Federal agencies respecting various utility industries during the New Year.

By FRANCIS X. WELCH *

THE late Senator "Cotton Ed" Smith of South Carolina used to tell the story about a very earnest young man, going into politics, who made his maiden speech in a rather hard-boiled election district which for years had been pretty well controlled by the local political machine. Courageously he decided to make an issue of the honest ballot. The day after his speech, a friend asked him what he had told his audience.

"I told them," he said emphatically, "that I had never in my life paid for a vote, and never in my life intended to do so."

"That sounds like great stuff," replied the friend. "How did they take it?"

The young man looked puzzled. He said, "I am not sure. A few cheered, but the rest seemed to lose interest."

It is easy to laugh at such jokes about an openly venal electorate. But actually, and in a much broader sense, experienced politicians realize that *every* group of voters has its special interests. And, if it is not practical to make promises directly appealing to such special interests, it is generally politically wise to refrain from offending them—at least during the campaign season.

THIS is not to suggest, in the slightest degree, that the great mass of voters at the polls of the United States are not "dollar honest." On the contrary and without question, the most honest and free electorate in the world today is in this country. But the practical fact remains that during an election year our Congressmen and others who are required to submit their fortunes to the verdict at the polls are likely to be less forthright, less decisive, and more inclined to put things off than during other years when there

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is no compaign in the offing. This is especially true during a presidential election year when the fate of both major parties, for four years at least, and perhaps more, lies in the balance of a single day's ballotting in early November.

The New Year of 1948 is not likely to prove any exception to this general observation on the conduct of Congressmen on the eve of a national election. If anything, the likelihood of a close political contest, complicated by foreign crises, domestic inflation, a third party threat, and the passing from the scene of a pair of the most powerful coat tails in political history, seems destined to make all of our political figures in Washington, during 1948, act most circumspectly.

This is another way of saying that the regular session of Congress may prove more industrious in promoting issues than in settling them, one way or the other. It will not pass any more major controversial legislation than is absolutely necessary to keep the government running and uphold the hands of our foreign policy makers on a bipartisan basis.

Getting down to cases, on public utility regulation, either pending or likely to be introduced in Congress, this do-nothing-to-make-anybody-sore atmosphere is likely to have the following general results:

No new major public power projects will be authorized by Congress in 1948.

Existing public power projects will be given sufficient funds to keep construction and operation going along in good style for the incidental approval of the voters in local areas affected.

No new major regulatory legislation affecting public utilities is going to be enacted, although there certainly will be a lot of fuss and feathers about a variety of measures in this category.

Public power projects will be saved by the Democrats for a campaign issue and President Truman will make an heroic effort to keep the issue alive. But it won't make much of a splash in competition with a lot of other more exciting things happening during the election year circus. Conservation of natural resources with some sharp political overtones will get a lot of attention, with resulting impact not only on the electric utility industry but natural gas and water supply. And, of course, there is always the atom to pep up the discussion.

Congress is not going to succeed in stopping inflation in 1948 through any such modest control measures as the Republican Congress approved during the special session last month. Neither will the administration stop it with its ominous talk about emergency. Nor will the labor leaders with their talk of a third round of wage boosts. But a dose of mild recession, which could set in during the summer months, creating some unemployment, might produce some such result the hard way —with political consequences not now discernible. The trend in utility rates will continue generally up.

So much in a general way, as to what Congress might do or might not do in 1948 directly or indirectly affecting the utility industries. Before going into a more detailed discussion, for further enlightenment as to this list of prognostications, it might be well to give some attention to the background of the Washington picture as we enter the year 1948—legislative, administrative, and regulatory (quasi judicial).

Offhand, this writer is unable to recall a single New Year season when the coming events were so beclouded with uncertainty. This is not by way of alibi.

RESULTS OF 1947 PROPHECY

Roughly, seven out of the following eight predictions by Mr. Welch one year ago occurred as forecast.

1. Special Federal labor legislation affecting public utilities will be passed by Congress, looking toward, if not actually setting up, compulsory arbitration of public utility strikes.

RIGHT

This was the Taft-Hartley Act with its special provision affecting utilities and other national industry strikes.

2. A more sympathetic attitude toward natural gas will be noticed in Congress. The Federal Power Commission will notice it and submit a mild report on its recent special investigation.

RIGHT

The FPC report is still incomplete but the staff sections so far have been mild enough.

3. Counterproposals to restrict FPC jurisdiction not only as to natural gas but also state commission activities will be introduced and favorably received in Congress. Final approval may not come in 1947.

RIGHT

Rizley and Miller bills—stalled until '48.

4. Interior's, Reclamation's, Bonneville's, and other public power plans will get cut deeply as the result of economy sentiments in Congress; operating restrictions will also be added. Even the Rural Electrification Administration will get its budget nipped.

RIGHT

Even REA was "nipped" $25,000,000 below budget.

5. No new public power projects will be authorized, although the St. Lawrence project will get a brisk revival. Various "authority" bills are dead. Proposals looking toward Federal activity in gas, telephone, or telegraph fields have no chance.

RIGHT

In every detail.

6. There will be congressional investigation of tax exemptions involving coöperatives and other similar tax inequities. But actual tax repeal in 1947 is likely to be confined to telephone and telegraph excise taxes.

PARTIAL

The excises were not cut.

7. Regulatory investigation of the Federal Communications Commission is a fair probability in the House; but actual amendment of the Federal Communications Act does not appear in the cards for 1947, unless it be in the form of an anti-Petrillo labor amendment.

PARTIAL

The investigation is still pending as well as the amended act.

8. Utility rates throughout the states will start up in 1947 unless the present inflationary trend dies down. Congress will not interfere.

RIGHT

The Author's 1948 Predictions Will Be Found on Page 19

It is a fact that there are more imponderables on the scene today than even during the war years. During the war years, we could be pretty sure of a disciplined home front, although military fortunes might be a matter of conjecture. But, today, we have a rapidly shifting economic and political situation at home, as well as abroad, which, of course, always complicates the task of the prognosticator.

For example, take the St. Lawrence seaway-power project. Just a few weeks ago the outlook for this perennial and controversial proposal seemed to be especially good—the best in more than a decade. The Democratic administration is committed to it as a New Deal heritage, and an increasing number of Republicans in and out of Congress are smiling upon it, because the seaway benefits would largely flow to the heart of Republican territory in this country—the Great Lakes and middle western states.

Further the Senate Foreign Relations Committee voted approval of the project before the 1947 regular session of Congress ended. The whole setup looked like a fast 1948 getaway for the St. Lawrence. Then came a figurative bombshell from an unexpected quarter. The governor of Panama, General Mehaffey, an Army Engineer, presented a report to President Truman which the President sent to Congress. It had nothing to do with the St. Lawrence and did not even mention the St. Lawrence.

It simply urged, as a matter of military security, that the Panama canal be reconstructed as a sea level canal at the estimated cost of two and one-half billion dollars. Such a change, he said, was necessary to protect the canal in any degree from the atom bomb.

More than that, the report indicated that some changes will be necessary to protect the canal against *any* sort of bomb. The report indicated that the present lock-type canal at Panama is virtually obsolete from the standpoint of defense. The present canal was so vulnerable during the last war, it was pointed out, that the only reason it was not seriously damaged was the fact that it was not seriously attacked. Moreover, the canal's peacetime business is growing so rapidly that something will have to be done about it anyhow, before 1960, or it will simply fail to handle the traffic.

So much for the Mehaffey report which may or may not receive attention at this session of Congress, in the form of new legislation. But the unexpected effect of the shadow thus cast on all "lock-type" canals was to throw the chances of the St. Lawrence seaway into at least a partial eclipse. Senator Aiken (Republican, Vermont) felt it necessary to make a spirited defense of the St. Lawrence proposal, in which, at the same time, he had to dodge two horns of a dilemma: (1) Either the St. Lawrence seaway is of vital importance to our defense and should therefore not have obsolete features of vulnerability, or (2) it is not so important to our national defense, in which case we had better spend our available public money on something that is more urgent along that line.

The upshot of this discussion, generally lost in the more sensational foreign and domestic news of the past weeks, was that the St. Lawrence is not a sure thing at the 1948 session, by

any means. The Congress is going to study it a lot more carefully before appropriating the authority for the amounts involved. The railroad, labor, and other interests are going to make the most of this new-found argument.

THIS is simply one example of how quickly things can change in the present plastic state of affairs in the nation's capital. Let us take another example, this time in the regulatory field.

The Federal Communications Commission seemed to be sailing a pretty even course just a few months ago. Gales of turmoil which had characterized the earlier years of that agency had calmed down, thanks to a combination of career appointments by President Truman and the steadying influence of its young ex-chairman, Charles R. Denny. The perennial demands for an investigation of the FCC and a rewriting of the Communications Act were introduced as usual in 1947, but with less-than-average steam behind them. Then, almost overnight, a series of developments began to rock the boat.

First of all, Denny resigned to take a position in private industry. Next, President Truman threatened to appoint an arch New Dealer, Wayne Coy, to succeed Denny, which started up the partisan Republican bloc in full cry under GOP National Chairman Reece. Truman had scarcely placed that issue on ice by deferring any appointment until 1948 when something else happened. Commissioner Durr picked the period during which Congress was having its differences with Hollywood over the so-called subversive Red activities to make a few suggestions about the Federal Bureau of Investigation sending "unsolicited" data (along these lines) to the FCC. The FBI threw the ball right back to the FCC by refusing to send any more data unless Durr's statement was repudiated. This blew up a fresh gale within the FCC, the result of which seemed to be that Durr's statement *was* repudiated. Acting Chairman Walker virtually apologized to the FBI and asked it to continue the FCC on its mailing list for anti-Red and other subversive information. But this time the gale had reached Capitol Hill. Senator Capehart, leader of the GOP partisan bloc in the Senate, renewed the demand for an investigation of the FCC.

What all this will amount to in 1948 is hard to say. Senator White (Republican, Maine), majority leader of the Senate, is going to press for a bill to rewrite the Communications Act and unless the scenery changes around the FCC pretty soon the Capehart faction may well blow it into a full-scale investigation. Again the fickle winds of an election year have caused

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¶ *". . . the regular session of Congress may prove more industrious in promoting issues than in settling them, one way or the other. It will not pass any more major controversial legislation than is absolutely necessary to keep the government running and uphold the hands of our foreign policy makers on a bipartisan basis."*

Predictions of Events for 1948

(Here is a summary of the things likely to occur in Washington of special concern to the public utility industry.)

1. Utility rates will continue up.
2. No new public power projects will be authorized in 1948.
3. Existing public power agencies will be well provided for.
4. No major regulatory laws in 1948.
5. Natural gas will get special attention but no legislation in 1948.
6. Utilities will get the political spotlight in the 1948 campaign.
7. Taxes will be reduced on excise items and for personal income, but not very much on corporation income generally.
8. Price controls and rationing will be an issue if not an accomplished fact during 1948.
9. No substantial labor legislation during 1948, except, perhaps, an increased minimum wage standard.
10. The FPC will continue to allocate natural gas in short supply.

a sudden change in a stabilized situation.

So if the reader will bear in mind this changeable atmosphere, he may read with more understanding the following ten predictions of things to come in 1948, of special interest to the utilities:

1. *Utility rates will continue up.* Already telephone rates are in full flight, transit rates are well started, and gas rate petitions have picked up momentum. Electric rates, last to halt their steadily downward curve over the past two decades, have struck bottom and are showing signs of following the pattern of other utilities. Increased operating expenses during the year 1948 make it inescapable that many electric utility companies follow suit. The New Year will be marked by numerous rate cases and local rate controversies. Experiments and short cuts, such as recently attempted by the Wisconsin commission in the so-called "City of Two Rivers Case,"[1] may develop as the regulatory commissions find themselves caught between the economic pressure of increased rate petitions and the political resistance of the public toward paying higher prices for anything.

2. *No new public power projects will be authorized in 1948.* St. Law-

[1] This was the decision of the Wisconsin commission in City of Two Rivers *v.* Commonwealth Telephone Co. 70 PUR NS 5, in which the commission dispensed with the formality of finding a rate base or even a rate of return in justifying a formal rate reduction. The commission's order was reversed in the lower state court and further appeal was expected.

rence seaway proposal stands the best chance. But in the light of what already has been stated, this writer is now inclined to give it slightly less than a 50-50 chance of winning final enactment at the regular session of Congress. There will be much support and argument in favor of this project and the outcome may well be pretty close. But a forecast has to go one way or the other. So here's guessing that the St. Lawrence will stay on the shelf at least another year.

Other proposed new projects are easier to dismiss. The so-called Missouri Valley Authority will be revived for election campaign purposes. But the Army Engineers and the Interior Department are moving ahead so rapidly on development of the Missouri under the so-called Pick-Sloan plan that the MVA seems destined soon to become practically a moot question. If so, then the same can be said, *a fortiori,* about the other eight or nine regional valley authority proposals to develop river basins according to the plan of the Tennessee Valley Authority. The armed forces are likely to emerge as the principal blockade against the extension of civilian control and authority over our rivers, á la TVA, or in any other form.

3. *Existing public power agencies will be well provided for.* The Rural Electrification Administration, in particular, is likely to get about as much money for the next (1949) fiscal year as it did during the current fiscal year —that was $225,000,000 in lending authority. REA also may have to take a few curbs on its operating policies for which it is already preparing a counterattack in the form of blaming the private power industry for local shortages in power supply. But REA is politically popular with the Republicans as well as the Democrats, because it has attracted a favorable farm vote following. In other words, REA may be criticized and even disciplined, but it is not going to be shortchanged very much.

The Interior Department may be in for even more of a wigging, because its Reclamation Bureau officials have been cutting some corners on project spending in such a way as to put some local Republicans on the spot. There have been accusations on one hand that Reclamation has violated the Anti-Deficiency Act by spending at a greater rate than its appropriations allow, and, on the other hand, that the bureau has juggled its spending in such a way as to force curtailment of construction activities which Congress would not have permitted if it had had full information.

These charges may seem inconsistent; but they add up to a somewhat partisan argument that Reclamation has deliberately aggravated the situation so as to put local pressure on Congress. True or otherwise, Reclamation and Interior officials may be given some stiff lectures and may even have to undergo a turnover in top-level personnel. But the cuts in the appropriation will not be too severe—they may not be even as severe as they were last year. The GOP leadership in Congress is just as anxious for western votes as the Democrats are. Reclamation spending is looked upon as an accepted effort in that direction.

4. *No major regulatory laws in 1948.* The Miller bills to amend the Fed-

eral Power Act and the Rizley Bill to amend the Natural Gas Act will all get their day in Congress. Both of these affect the jurisdiction of the Federal Power Commission. The Rizley Bill already has passed the House. But the threat of a presidential veto and the chances of improving Democratic emphasis on a utility campaign issue will not make the Republicans too anxious to make a last ditch fight for such measures. Chances would seem to favor their being held over for another term of Congress. The same may be said of the White Bill for substantial revision of the FCC.

5. *Natural gas will get special attention but no legislation in 1948.* The FPC is having its own problems trying to get together a final report on the special investigation into natural gas. When it does it will make certain recommendations for legislative action by Congress. Congress will politely receive them, if it is still in session at the time such recommendations are made. They stand little chance of being acted upon in 1948.

6. *Utilities will get the political spotlight in the 1948 campaign.* Already President Truman has sounded the note of public power in his dedication speech of a national park reserve at the Everglades in Florida on December 6th. Political observers generally expect that President Truman will have to take a strong line on public power policy and that may mean rapping the utilities periodically in the best tradition of the late President Roosevelt. He will have plenty of support from such administration followers as FPC Commissioner Olds, who already has gone out lock, stock, and barrel in favor of making public power a major issue in the Democratic campaign.

The fight being waged between the two parties over the FCC likewise shows that that regulatory body occupies a strategic position during a campaign year—with its invisible control over radio broadcasting, television, and so forth.

REA Administrator Wickard and other REA officials will gladly beat tom-toms on the antiutility issue, and already have started to do so, blaming short power capacity on private utility "shortsightedness."

The whole Democratic idea seems to be to keep the left-wing or socialistic crowd from being tempted by any third party notions which Henry Wallace might advocate. This theory assumes that conservative votes will go to the Republicans anyhow, and that Truman's best hope is to keep the left-wing support solid within the party. Lambasting public utility industries seems to be one of the accepted instruments to be played in any such chorus. Whether such a campaign issue will actually register is something else again. Even the late President Roosevelt made little or no use of the utility issue in his 1944 campaign, although he certainly used it emphatically enough in previous campaigns.

However, it may be that the voters next fall will be far more interested in foreign affairs and domestic economic problems such as shortages, price controls, taxes, and so forth. What is said here is simply an attempt at forward-looking reporting of what the Democratic plans seem to be for 1948.

7. *Taxes will be reduced on excise items and for personal income, but not very much on corporation income generally.* With all the agitation in the fall of 1947 over the unfairness of tax exemption for coöperatives, including REA coöperatives, it is not likely that any corrective steps will be taken to tax the co-ops in an election year. Nor will corporation taxes be reduced or adjusted to minimize any alleged "unfairness."

But certain excises such as the high tax on monthly telephone bills, long-distance calls, telegraph messages, electric power sales, and railroad and bus passenger fares will be curtailed if not eliminated in some cases. This will fit into the broader pattern of relieving some of the burden of high personal income taxes. The latter also are likely to be adjusted downward in all brackets. Relief may not be as much as a good many of us would like. But it seems hard to believe that Congress would overlook a chance of doing something popular like this when the votes have to be counted next November.

8. *Price controls and rationing will be an issue if not an accomplished fact during 1948.* These may not take the drastic forms of wartime restrictions such as those administered by the now defunct OPA and WPB. But if the pressure of inflation continues it is difficult to see how the modest controls recently approved by the special session of Congress will be found sufficient. The entire subject seems destined to develop into a hot campaign issue, with both parties jockeying for position. But the inflationary spiral may not wait for election day. Action may well prove necessary before that time.

In any such event, public utilities seem assured of enjoying exemption from Federal price fixing just as they did under the OPA, because of their normally regulated status. In fact, a revival of something like the WPB might even be of considerable assistance to the utilities by giving them a better chance for short supplies and materials to carry on needed expansion and rehabilitation of operating plant.

9. *No substantial labor legislation during 1948, except, perhaps, an increased minimum wage standard.* Labor will argue hotly for changes in the Taft-Hartley Act. So will those who want to put more teeth in it, such as a more stringent antiutility strike clause, stimulated by the current labor trouble in the telegraph industry. But this will be mostly talk, not action, until after the votes are counted.

10. *The FPC will continue to allocate natural gas in short supply.* Although the "emergency" situation already has continued through two heating seasons, the unprecedented pipe-line expansion program will not move along fast enough nor far enough to avoid the FPC once more assuming the rôle of umpire in deciding who shall get gas and how much and where during the heating season of 1948-49. This "emergency" power is beginning to show just a faint sign of growing into a normal situation, overshadowing the contractual relationship between the natural gas pipe-line industry and its utility distributors. The controversial "end use" angle is peeping out from under the "emergency" cover.

The Battle over Water In the West

One of the bitterest controversies that has ever developed between two western states is that which concerns the control of the waters of the Colorado river system. Stemming from this basic struggle over the supply for one utility service—namely, water—is the supplementary problem of allocating rights for incidental hydroelectric development. Overshadowing the whole controversy may well be the relative future prosperity of California and Arizona.

BY ALFRED M. COOPER*

PROBABLY the oldest public utility service of all is water supply. Even before the Sons of Jacob quarreled with the Moabites over water rights in the plains of Palestine, the ancient civilizations of Egypt and China had learned the art of diverting fresh water from streams and river beds through open sluiceways and primitive piping and aqueducts into homes and reservoirs for human use. Today, the problem of water supply has lost none of its primary importance.

Among our western states, irrigation and its engineering twin, reclamation, are but modern extensions of this age-old problem. Not only has the supply of water become of vital importance to the rapidly expanding areas of the West, but the more recent and equally important by-product of hydroelectric development is a complication which has emerged, more or less, during the present generation. The fortunes of our western states have come to depend on these two basic public utility services—water and power supply.

As between California and Arizona, where the issue has become especially acute, efforts to settle the dispute by arbitration run back for many years. Yet the feeling is so strong and the stakes are so great that each attempted conciliation seems to leave the conferees further apart than ever. Undoubtedly the final showdown will have to take place in the highest tri-

*For personal note, see "Pages with the Editors."

bunal of the land, the U. S. Supreme Court. The necessity for such an exalted forum of decision seems to be required by the very nature of the controversy, involving as it does the interpretation of so many legal doctrines, theories, public documents, and legislative enactments.

BUT it is easy also to lose oneself in this forest of controversy unless the over-all truth is kept continuously in mind. This is the blunt and simple fact: There just is not enough water in the Colorado river system to meet all the present and future demands upon it. Somebody is going to have to go short, no matter how carefully the final division is made; no matter how devoted the judges may be to abstract principles of justice; and no matter how earnest their efforts to arrive at equity for all concerned.

It may be a little difficult, especially for easterners residing in the Atlantic coastal states of plentiful rainfall, to comprehend the high degree of partisanship which has attended these periodical outbreaks of western controversy over the general issue of water supply and incidental development rights. But if one approaches the matter from the background of the western point of view, he may actually express some wonder that there has been no bloodshed between citizens of the rival states during the quarter-century the controversy has continued to develop.

The reader may recall an incident a few years back when Arizona's "navy," consisting of a small craft mounting machine guns, attempted to enforce her demands on California from the middle of the Colorado river. This may have impressed the eastern or middle western reader as a more or less minor, if not comic, gesture, comparable with the recent "ultimatum" which the city of Newark, New Jersey, served on the U. S. Navy regarding the junking of the battleship *New Mexico*. But the Colorado river controversy is no joke to westerners. The feeling of the two states on this question is higher today than it was when the Arizona "navy" fared forth on the Colorado. What, then, is the shooting —or near shooting—all about? Here is a quick fill in on the background:

IN 1901 one of the most successful irrigation projects ever completed in the West was built with private funds. The California Development Corporation obtained an appropriation of 10,007 feet of Colorado river water to irrigate 523,000 acres of desert land. Thus was created the Imperial Valley Development, with its main irrigation canal located within the territory of Mexico — for reasons peculiar to the local terrain. The project was expanded in 1911 when it became the Imperial Irrigation District. Its area has since been increased to 875,000 acres. In 1919, a project was initiated to develop a canal to supply Imperial valley, Coachella valley, and other reclamation districts in California with Colorado river water; this canal to be built wholly within the territory of the United States. This was the inception of the great Boulder canyon project, the building of Hoover dam, and of the present-day All-American canal.

Before Hoover dam was built a compact was drawn up, at the instigation of the Department of the Interior, among the seven states that border

Importance of Hydroelectric Development

"NOT only has the supply of water become of vital importance to the rapidly expanding areas of the West, but the more recent and equally important by-product of hydroelectric development is a complication which has emerged, more or less, during the present generation. The fortunes of our western states have come to depend on these two basic public utility services—water and power supply."

upon the Colorado river and its tributaries. In this compact a rough division of Colorado river water was agreed upon, in which the so-called "Upper Basin" states were to receive 7,500,000 acre-feet of water, and the "Lower Basin" states were to receive a like amount plus an additional million acre-feet annually.

The Upper Basin states are Colorado, Wyoming, Utah, and New Mexico. The Lower Basin states are California, Arizona, and Nevada. (Actually, small portions of Utah and New Mexico are included in the Lower Basin division.) The dividing line between the basins was to be at Lee's Ferry, and the Upper Basin states guaranteed that a minimum of 7,500,000 acre-feet of water would, in any year, pass below that point in the river.

To date there has been no misunderstanding between the Upper Basin states as a group and the Lower Basin states. The controversy between California and Arizona centers around the apportionment of that million acre-feet of additional water which accrues to the Lower Basin states each year. And even here Nevada, the third Lower Basin state, has never entered into the controversy, having expressed herself as being satisfied with her allotment of Colorado river water. Nevertheless, Nevada, like any innocent bystander, has suffered from this battle between her neighboring states, and has done what she could to bring about a peaceable termination of the controversy between Arizona and California. Much long-range planning and construction of water and power projects has been complicated if not actually held up by this interminable controversy between the two delta states.

The legislatures of six of the seven interested states ratified the Colorado River Compact in the early Nineteen Twenties. Arizona refused to ratify until 1944, when it became evident that she would lose all rights to Colorado river water if she did not do so.

In the meantime, California went ahead with the organization of its Metropolitan Water District of southern California, through which the citizens of this area expended $500,000,000 to build the Metropolitan water aqueduct to carry Colorado river water to the coastal areas of southern California. This project was carried through without Federal aid, and was based upon the conception of apportionment of the aforementioned "surplus" water as outlined in the Colorado River Compact.

This surplus exists because the average annual flow of the Colorado, in the years between 1897 and 1943, was more than 19,000,000 acre-feet, whereas the basic apportionment of this water between the Upper and Lower basins was computed on a division of 15,000,000 acre-feet, the approximate minimum annual average flow in any 10-year period since records have been kept. The compact also stipulated that any water ceded in the future by treaty to Mexico from the Colorado river should come out of this surplus water.

The treaty with Mexico, recently ratified, allots 1,500,000 acre-feet of Colorado river water annually to our neighboring republic, of which amount she is using 1,000,000 acre-feet.

In the years between 1930 and 1934, contracts were executed under the terms of the Boulder Canyon Project Act between the Secretary of the Interior and the several southern California agencies concerned, for storage and delivery of Lake Mead water. In 1931, these California agencies drew up an agreement to apportion California's share of Colorado river water among themselves on a priority basis. In this agreement the division was to be made as outlined on page 27, in order of priority.

The important thing to note, in connection with this priority agreement, is that the agricultural areas have first call on Colorado river water in southern California, and any sharp reduction in the water apportioned to California would most deeply affect the industrial cities of southern California, including Los Angeles, San Diego, Long Beach, Santa Monica, Pasadena, and five others. And Arizona is determined that California shall receive less than 4,000,000 acre-feet of Colorado river water—an amount that would force these cities to shut down most of their industries for lack of water.

These cities are now using 1,212,000 acre-feet of Colorado river water annually, and need much more water if they are to develop further as industrial centers.

When Arizona ratified the compact in 1944, the Secretary of the Interior allocated to Arizona 2,800,000 acre-feet of Colorado river water annually. However, Arizona already was utilizing all of the water in the Gila river system, which is a tributary of the Colorado and therefore considered by everyone concerned to be Colorado river water. The Gila river water used by Arizona amounts to 2,300,000 acre-feet annually.

One of the bones of contention between California and Arizona lies in the fact that Arizona wants this Gila river water measured as that water which would actually reach the Colorado if no use were made of it in Arizona. Since evaporation and seepage of such a desert river is enormous, there are 660,000 acre-feet of water annually involved in this single phase of the controversy.

Arizona is developing by leaps and bounds into one of the great winter resort areas and agricultural states of the Union. Her continued growth in both of these phases is contingent upon her acquisition of a lot more water from some source — and the only source available is the Colorado river system.

California, having failed in her attempt to arbitrate the water controversy with Arizona, would like to have the matter settled by a decision of the U. S. Supreme Court. Arizona, according to James H. Howard, general counsel of the Metropolitan Water District of southern California, does not wish to leave this decision to any court of law, but is attempting to secure a settlement on a political basis.

As proof of this contention, Howard

Priority No.	*Agency and Description*	*Annual Quantity In Acre-feet*
1.	Palo Verde Irrigation District—104,500 acres in and adjoining existing district	
2.	Yuma project (California division) not exceeding 25,000 acres	3,850,000
3.	(a) Imperial Irrigation District and lands in Imperial and Coachella valleys to be served by All-American canal	
	(b) Palo Verde Irrigation District—16,000 acres of adjoining mesa	
4.	Metropolitan Water District, city of Los Angeles, and/or others on coastal plain ..	550,000
5.	(a) Metropolitan Water District, city of Los Angeles, and/or others on coastal plain	550,000
	(b) City and/or county of San Diego	112,000
6.	(a) Imperial Irrigation District and lands in Imperial and Coachella valleys to be served by All-American canal	300,000
	(b) Palo Verde Irrigation District—16,000 acres of adjoining mesa	
	Total	5,362,000

A seventh priority with respect to all remaining water available for use in California was apportioned for agricultural use in the Colorado river basin in California as shown on Map No. 23,000 of the Department of the Interior, Bureau of Reclamation.

This agreement was executed by the seven agencies enumerated and has become known as the Seven-party Water Agreement. The schedule of priorities was included in each of the water contracts.

points to two recent bills introduced into Congress. One of these, the Gila-Wellton-Mohawk irrigation project, has been passed, and allocates an additional 600,000 acre-feet of Colorado river water to Arizona. The second bill, authorizing the Central Arizona project, calls for diverting another 1,200,000 acre-feet of Colorado river water to Arizona use. This bill is now in committee, and it has been indicated that it will be passed with a provision that any further water allocation to Arizona must be subject to a final settlement of the entire Colorado river water controversy now existing between California and Arizona.

ARIZONA now contends that California's apportionment of Colorado river water must allow for the excessive evaporation that takes place in Lake Mead, a contention which California vehemently denies. In this angle of the controversy there are at stake another 550,000 acre-feet per annum of California's water supply.

Since the Upper Basin's share of Colorado river water remains constant at 7,500,000 acre-feet, while the Lower Basin states may divide up all surplus water from the river's flow, the Lower Basin had, in 1947, 9,900,000 acre-feet of water at its disposal. This figure allows for the deduction of Mexico's allotment of water under the terms of the treaty.

As compared with this total available supply, the water requirements, on a consumptive use basis, of existing and authorized projects and recognized commitments in the Lower Basin, are estimated at about 10,130,000 acre-feet of water annually. Thus there exists at this time an annual deficit of 2,300,000 acre-feet of water in the Lower Basin. Actually, this deficit may be larger, since this computation assumes complete regulation of average flow throughout the Colorado river system, and this has not yet been demonstrated as possible.

Nevertheless, it should be clear that any future authorizations for the use of Colorado river water must be made at the expense of existing commitments.

California authorities contend that, if Arizona's interpretation of the project act and the compact between the states should prevail, California agencies will be allotted but 3,900,000 acre-feet of Colorado river water annually, which is 1,500,000 acre-feet less than existing operating requirements. This allotment of water would only cover the first, second, and third priorities, as set forth in the preceding tabulation, and leave little or no water from this river for the ten industrial cities of southern California's coastal plain.

ARIZONA authorities have opposed any procedure for the settlement of these issues, including negotiation, arbitration, and litigation. They assert that the issues have all been determined.

Southern California authorities contend that the citizens who subscribed $500,000,000 for the construction of the Metropolitan water aqueduct did so in the firm belief that the project act and the compact between the states assured California of a minimum of 5,400,000 acre-feet of Colorado river water annually. California officials are convinced that the only way to settle this controversy is

through litigation, and that the sooner this is done the better.

In this connection it is interesting to note that Senator McCarran of Nevada, for himself and for Senators Malone of Nevada and Downey and Knowland of California, has introduced a resolution in the Senate authorizing and directing the Attorney General to interplead the states of the Lower Basin for the purpose of determining the conflicting claims with respect to Colorado river water. Similar resolutions have been introduced in the House. Arizona will resist these measures as she is also resisting the authorization of litigation on this subject.

The Colorado river is, literally, the last "water hole" for both California and Arizona. Upon the ultimate decision of the U. S. Supreme Court in this matter will depend the future development of each of these states to their fullest potentialities. Both states must have much more water to care for rapidly increasing populations, expanding irrigation projects, and (in California) enormously augmented industrial use of water.

The Owens river water, which thirty years ago seemed so ample a supply for Los Angeles for generations to come, is now but a drop in the bucket. All of the water in northern California rivers is needed there for irrigation and for use in the cities of the Bay region. No rainmaker can increase California's rainfall because clouds rarely form in its skies except during the rainy season.

This leaves only the possibility that some workable method may one day be developed whereby millions of acre-feet of water from the Pacific ocean may economically be converted from sea water to water at least sufficiently fresh to be satisfactory for irrigation purposes. Experts all agree that such a wholesale system of water condensation would be enormously costly.

THERE is another phase of the problem concerning Colorado river water which may, in the not too distant future, conceivably overshadow all legal or political aspects of the situation. I refer to the revenge which Mother Nature may be about to inflict on those who have tampered with her methods of retaining delicate balances in controlling great natural forces.

For hundreds of centuries the Colorado river has been delivering an enormous load of silt to the Gulf of California. This silt has been deposited in the form of a barrier which at one time reached a height of about 28 feet. This silt barrier is all that separates the Gulf of California from Imperial valley, which lies well below sea level.

So long as silt continued to come down the Colorado this barrier was built southward an appreciable distance each year. Now, however, practically no silt is carried down the Colorado. Nearly all of it is deposited behind the various dams man has thrown across the river.

In the meantime, at the head of the Gulf of California there exists the greatest tidal bore in the Pacific ocean. The mean range of tide here is over 21 feet; the maximum spring tides rise to 31.5 feet and, with strong winds from the right direction, these tides may reach 50 feet. These terrific tides, twice daily, are tearing into the silt

barrier at the mouth of the Colorado in the form of tidal waves. Each day the tide takes back with it into the 1,-100-foot-deep gulf a load of silt that cannot be replaced from the river. Only the fact that this tidal bore reaches its maximum height some time before the mouth of the Colorado river is reached, prevents it from surging over into Imperial and Coachella valleys in California.

At the same time it happens that the mouth of the Colorado is bisected by the great San Andreas Fault; and in the earthquake of May 10, 1940, this fault slipped 15 feet at this point. Fortunately for Imperial valley, this slip happened to be horizontal in direction instead of vertical.

EITHER by rapid erosion, which is no longer counteracted by silt deposit, or by earthquake, it would not be difficult for the waters of the Gulf of California to enter Imperial valley. Whatever steps are to be taken to protect Imperial valley from a greater cataclysm than that which created Salton Sink in 1904 obviously must be taken soon. It is also interesting to note that any engineering works projected for this purpose must be built on Mexican soil, but with American dollars. Many who have studied this problem contend that, sooner or later, the United States must purchase Baja Lower California from Mexico and thereby obtain the western peninsula that matches that of Florida on our eastern seaboard.

And, finally, there is the difference of opinion among experts as to whether any projected remedies actually will be effective in forestalling a great catastrophe, now that the silt of the Colorado is no longer carried to its mouth.

Whatever action is taken with reference to Lower California, it is to be hoped that the entire controversy over the apportionment of Colorado river water between the states of Arizona and California may be quickly and permanently settled.

As matters now stand, neither state can make definite commitments with reference to matters affecting her future growth and development with any confidence that her promises may be carried out.

Arizona must have more water if she is to continue to grow as a great resort state. California, and particularly the coastal industrial cities of southern California, cannot continue her phenomenal development without more water.

As I have said, whoever decides the issues at stake in this controversy must possess all of the wisdom of Solomon, and even then must expect to satisfy neither of the parties to the dispute.

Can't Blame Winnie for This One!

IN a recent speech, former Fuel Minister Shinwell alluded with pride to the nationalization of coal, electricity, and gas as a "trilogy." But his enthusiasm was somewhat dampened by a commentator in the LONDON TIMES *who points out that the Oxford dictionary defines a trilogy as "a set of three tragedies to be performed in immediate succession."*

Pensions in Public Utilities

Public utilities generally have led the entire field of American industry in the establishment of pension systems for their employees. This trend is still continuing and there is no reason to expect that it might be reversed.

BY MARION HAMMETT*

THE efforts of employers to provide some security for over-aged employees is not a new problem by any means. It existed in one form or another long before industry began to adopt specific programs for dealing with it. While some of these pension plans date back more than fifty years—in the case of public utilities and railroads—old age was not regarded as a special problem until after the turn of the century.

There are several reasons for this. In earlier periods the average life span was shorter, which meant that relatively fewer people lived long enough to reach old age—an age when they could not function as breadwinners. Moreover, the fact that our industries were largely organized on a handicraft basis seemed to facilitate the absorption of older or handicapped workers.

This was especially true of agriculture, which accounted for about half the working population in 1875 and only 20 per cent by 1930. And, finally, the growth of large corporations employing many thousands of workers over long periods of time served to accentuate the problems of over-age and disabled employees.

THE paramount consideration behind any pension program is, of course, the need to remove or replace elderly persons who can no longer do an efficient day's work. In some industries—notably the railroads—public safety was involved. Other important considerations included the desire to develop a stable personnel of well-trained and competent employees and the good will which could be expected to result from a humane method of providing for aged or incapacitated workers.

In these circumstances it is not surprising that the nation's railroads or companies close to them were the first to set up formal programs for old-age

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and disability pensions. Thus the first formal industrial pension system in America was set up by the Grand Trunk Railway of Canada in 1874. This pioneer plan was quite limited. It required contributions from employees and applied only to the clerical and indoor staff who were thirty-seven years of age or younger at entry into the service. It was compulsory for all in this group who earned salaries of $400 or more annually.

By 1905 nearly half a million railroad employees, representing over 35 per cent of the average number employed by operating roads in the United States, were covered by pension plans. In 1927 the figures were 1,414,477, or 82.4 per cent.

OUR public utilities were the next important group of industries to come forward with definite pension plans for their workers. The first such plan was set up by the Consolidated Gas Company of New York in 1892. By 1929, according to Murray Latimer's comprehensive study, *Industrial Pension Systems,* about 50 per cent of the employers of street and electric railway systems and the same proportion of light and power systems were under formal pension plans.

Mr. Latimer estimates that 90 per cent of the workers in cable, telephone, and telegraph companies were covered by such plans. He adds this very interesting comment:

> Not over one-eighth of those in manufacturing industries are covered (as of 1929); formal pension schemes have as yet not touched the construction, motion picture, or automobile repair industries, and the coverage of mine and quarry workers and employees of chain stores, department stores, and hotels and restaurants, is negligible.

Before examining later trends for public utilities and other industries—especially since the enactment of social security legislation—it is worth while to trace the earlier history of pension plans in the utilities field.

There were eleven plans—all noncontributory—set up by public utilities before 1911 and in effect in 1928-1929. Seven of these were programs applying to street railways. The first of these schemes was begun in 1901 by the United Electric Railways Company of Providence, R. I. Next came a plan launched in 1902 by the Metropolitan Street Railway of New York. The third was set up in 1903 by the Denver City Tramway Company.

As might be expected, these plans were rather like those of the railroads, but from the beginning there was a definite tendency "to make them more liberal with respect to age at retirement, service qualifications, and relation of pension allowance to customary earnings."[1]

IN the period from 1911 through 1915 a total of 22 noncontributory plans were established by public utility companies, including two for cable, telephone, and telegraph companies. As of 1929, the 2 latter plans covered more than 375,000 employees.

During the next 5-year period, 1916-1920, public utility companies set up 18 pension plans—3 of them applying to employees of cable, telephone, and telegraph systems.

From 1921 through 1925, 9 additional plans were adopted, all of them covering employees of electric railways or light, heat, and power companies.

[1] *Industrial Pension Systems,* by Murray W. Latimer.

First Formal Industrial Pension System

". . . the first formal industrial pension system in America was set up by the Grand Trunk Railway of Canada in 1874. This pioneer plan was quite limited. It required contributions from employees and applied only to the clerical and indoor staff who were thirty-seven years of age or younger at entry into the service. It was compulsory for all in this group who earned salaries of $400 or more annually."

There was a further increase of pension plans from 1926 through 1929 when utility companies were reported setting up pension plans—3 of these involved employees of electric railways, heat, and power companies. Thus in the period from 1874 through 1929, there was a total of 64 noncontributory pension programs set up by public utility companies. Sixty of these concerns reported on the number of employees covered by such plans in 1929. The total, 616,186, included more than 225,000 employed by electric railways, light, heat, and power companies and nearly 441,000 employed by cable, telephone, and telegraph companies.

It is interesting to compare these figures with similar ones for industries outside the public utilities field. Mr. Latimer records a total of 243 plans for these other industries. This number included 223 concerns which reported on the number of covered employees in 1929 — the figure is just over 2,919,000.

But more than half of this total—1,562,000 — is accounted for by pension plans for railroad employees. Other large groups of workers covered in 1929 were found in iron and steel and their products, 391,000; chemicals and allied products, 240,000; machinery, not including transportation equipment, 246,000.

THUS, noncontributory plans were of major importance in the public utilities scheme of things long before the rapid growth of such plans began in 1940. While pension systems which required contributions from employees were in existence, they accounted for less than 160,000 workers in 1929 out of some 3,500,000 workers who were reported to have been covered by noncontributory plans.

What sort of protection were utility companies offering their older work-

ers under these pension plans? Necessarily, there was a good deal of variation between plans. In general the noncontributory plans paid a sum based upon the employee's earnings during a specified or calculated period and the length of time he was employed by the company. The most common practice used the employee's average earnings during his last ten years of service as a base for calculating the pension — though after 1920 there was a tendency to shorten the period to a 5-year average.

There were also many variations in the size of the retirement benefits paid and no average figure can be given. A typical sum for plans set up before 1911 would be in the neighborhood of $600 annually. Later programs were more liberal and a figure of $900 for the 1921-1925 period would probably be close to the median. With today's wage and salary levels, the present-day median, in some instances, would be even higher.

It is even more difficult to give any general picture of the eligibility rules for participation in a pension program. Age, length of service, and, in some companies, occupation were the chief determining factors. A large majority of the plans were open to all employees who met the age and length of service requirements.

Among public utility companies the pension most frequently offered was on voluntary retirement at sixty-five years of age after fifteen to twenty-five years of service. Where the plan provided for compulsory retirement this was likely to be either at seventy years of age or at seventy years after twenty years of service. In those plans which had incapacity retirement provisions the service qualifications generally ranged from ten to twenty years.

And now what about recent trends in pension programs? It is well known that World War II ushered in a period of very rapid expansion, especially in those fields where this type of protection was less common. This is well illustrated by a survey of 612 pension plans carried out by Hugh O'Neill.[2]

This study includes 57 programs covering employees of public utility companies. While there can be no direct comparison between this survey and the Latimer study, it is very significant that four-fifths of the 612 plans were established between 1940 and the middle of 1945. And almost 90 per cent were set up following passage of the Social Security Act in 1935.

Though the O'Neill study does not indicate what percentage of the 57 plans covering public utility companies were organized after 1935, there is no reason to suppose that this legislation hindered the adoption of such plans. Of course, the fact that many utilities already had pension programs would lead one to expect a slower rate of increase in this field.

As a matter of fact, taking the experience of industry as a whole in the United States, the O'Neill study clearly indicates the advent of the social security pension system helped rather than interfered with either the creation of new voluntary pension systems or the continuation or expansion of those already established before

[2] *Modern Pension Plans*, by Hugh O'Neill. Copyright 1947 by Prentiss-Hall, Inc.

1935. This probably was the result of widespread discussion and publicity about old-age security which attended the passage and enactment of the Federal statute. Employers and employees alike, once acquainted with the basic requirements and benefits of the Social Security Act provisions, undoubtedly began to explore the possibility of additional and more specialized coverage available under supplementary voluntary pension setups.

In any event, as already noted, four-fifths of the 612 voluntary representative plans selected by O'Neill were created *after* the Social Security Act went into effect, which is strongly persuasive of the encouragement and stimulus which the Federal statute gave to pension systems generally.

As a previous article in this magazine pointed out, both pension and insurance plans are much more prevalent among public utilities than in industry generally. Data presented in a survey conducted by the U. S. Bureau of Labor Statistics reveal some remarkable differences in the extent of pension plans among utility plants in different regions.

While the BLS sample, taken in 1945 and 1946, included only 130 electric light and power companies, the figures are worth quoting. In New England, where 19 light and power companies were surveyed, 15 had retirement pensions. Out of 18 plants in the Middle Atlantic region only a third reported having old-age pensions. The proportion was 4 in 10 for the Southeast. Among 30 plants in the Great Lakes region, 9 provided retirement benefits for their workers.

Six out of 15 plants in the Middle West had such programs. Only 1 of 8 surveyed in the Southwest reported having a retirement plan, and none were so listed in the Pacific region where 7 plants reported. For the country as a whole, including the Border and Mountain regions, 35 per cent of the electric light and power establishments surveyed had provided retirement programs for their older workers.

SPECIFIC predictions regarding future trends are not easy to make, especially in the field of public utilities. But we can recognize certain factors which point to the further extension of pension plans. One is the tendency for our population to become stabilized with a relatively high proportion of older people.

Another is the obvious trend toward large-scale enterprises which makes more and more workers dependent upon employers who cannot treat their problems individually. And, finally, there is the well-recognized determination on the part of many employers to reduce the economic hazards of their employees.

Having pioneered in this field, there is no reason to suppose that utility companies will forfeit their leadership in the future.

"WITHOUT delving into debatable grounds of economic policy, we feel impelled to point out that there is no magic fund in a public utility out of which increased costs for labor or materials may be paid."

—*Opinion, Massachusetts Department of Public Utilities.*

The Regulatory Battle Of Two Rivers

An appraisal of the recent decision of the circuit court of Dane county, Wisconsin, which involved a somewhat revolutionary concept of the "new freedom" of regulatory discretion to be exercised by state and Federal commissions.

By ARNOLD HAINES*

WHEN the public service commission of Wisconsin on July 31, 1947, handed down its decision in a somewhat obscure and relatively unimportant telephone rate case involving the little city of Two Rivers, Wisconsin, it actually fired a shot that was heard around the regulatory world. This was reported in the name and style of City of Two Rivers *v.* Commonwealth Telephone Co. 70 PUR NS 5. Its net result was merely to reduce local exchange rates by about $10,000 a year.

But the principles involved in the commission's opinion proved so portentous it was not long before gas, electric, Bell system telephone, transit, and other utility and regulatory interests began combing the decision and the older decisions which it purported to interpret as the possible forerunner of the greatest landmark case in public utility regulation since Smyth *v.* Ames in 1898. It even bid fair to overshadow, so far as sweeping consequences were concerned, the celebrated decision of the U. S. Supreme Court in the Hope Natural Gas Company Case (1944). This is the case which the Two Rivers decision claimed as its principal foundation. Why was this commission decision so important? The following thumbnail sketch of its import explains why very readily:

> The commission held that under the ruling in the Hope Case it did not even have to go through the motion of finding a rate base. Nor did it have to go through the motion of finding a rate of return. It simply fixed a rate which the commission held to be reasonable. It said that utility rate fixing was a constitutional "police power" and not an exercise of the government's right of "eminent domain." For this reason, it said, confiscation could not be an issue in rate making.

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An appeal was taken, and on December 5, 1947, the circuit court of Dane county handed down a decision reversing the Wisconsin commission in a decision styled, Commonwealth Telephone Company *v.* Public Service Commission of Wisconsin.

It was not only this decision of the Wisconsin Circuit Court which is significant. For that probably will be appealed to the Wisconsin Supreme Court. But it is also the devastating quality of the opinion of the circuit court which will deserve attention and perusal by all serious students of regulation. This opinion reflects, in many ways, the learned personality of the circuit court judge, Honorable Alvin C. Reis.

Indeed, if it were not for the necessary juristic ritual of rattling the dry bones of judicial precedent (with appropriate citations to case law) this opinion would read more like a popular article. It is garnished with the polished phrase, the apt metaphor, and what the French litterateurs mean when they talk about *le mot juste*.

Just the same, Judge Reis has done such an artistic job of blowing up the ingenious regulatory concepts so carefully erected by the commission opinion that it is difficult for even the lay reader to imagine how the commission counsel will manage its appeal.

The following few opening sentences are from the Reis opinion:

> We need consider the utility's challenge to the order only upon the grounds that the commission failed to make any findings of fact at all and particularly failed and, indeed, emphatically refused to find a rate base.
>
> To cut a utility rate is not unheard of in this state; but for the regulatory commission to repudiate the necessity of finding the "fair value" of the utility's property, or some other base, is to us unprecedented in forty years of administrative regulation—except with perhaps a permissible deviation from the rule in the case of emergency orders or temporary orders pending a determination of rate base. . . .
>
> Such a summary and abrupt exercise of power by an administrative agency can mean the gouging of the public by excessive rates if the only thing legally required is an edict that the new rates are reasonable and, by the same token, it may spell confiscation of the interests of investors by the simple fiatic utterance that the new rates will be reasonable.

What about the commission's idea that regulatory authorities have been released (through the Hope decision) from the old concept of exercising the power of "eminent domain"? The court says of this:

> That conception is thoroughly fallacious, as we see it. We did not know that the utility's property was being taken away from it (eminent domain) when its rates were regulated. We thought, on the contrary, that the utility was keeping its property and being allowed to earn money on it; and that public regulation was the alternative to public ownership, not its equivalent. We looked upon rate regulation as merely one of the many manifestations of the plenary "police power" of the state—and not the seldom used prerogative of "eminent domain." But we get nowhere by splitting hairs on that refinement. A rose under any name has petals of which we should be chary.

The further commission theory that rate making as a "police power" cannot be confiscatory, Judge Reis describes as a "revolutionary thunderbolt." His opinion states on this point:

> What decadence and desuetude might ensue to the public utilities of the nation—and to the consumers with them—if utility enterprises are subject to "destruction" by confiscatory rates? Shall we then go back to the oil lamp or erect a private electric light plant in each back yard?
>
> It strikes us that for the arm of the state to forbid utilities the right to make a fair return while affording to other lawful businesses at least the opportunity to do so, would be to deny the equal protection of the laws . . .

As to the commission's contention

that utility rate making need not be related to any rate base which the court finds is the "real meat in the stew," Judge Reis says:

> There is the 18-page [commission] opinion stripped down to nakedness. "The rates herein prescribed are ESTIMATED AND INTENDED to afford . . . an annual net profit . . . WHICH WE THINK it reasonable for the utility to enjoy. (Our caps.)
>
> There is where standard, base, foundation, test, guide—go out of the window—and the *ipse dixit* "we think" is substituted.
>
> We hope that we are not hypercritical in picking out the phrase "we think." The "we think" is precisely, however, the thesis of the commission's decision. In justice to the commission, however, let the "we think" be construed as "we find" that this profit is reasonable. Therein still is the fundamental unsoundness of the commission's decision. The commission finds nothing except that a certain amount of dollars represents a reasonable profit.
>
> It is "considered" by the commission [70 PUR NS 15] that $12,500 annually is a "reasonable profit."
>
> Reasonable profit on what? That is the trouble with the commission's decision. It has no bottom. It has a numerator but no denominator.

Judge Reis traces the rise and fall of the "reproduction cost theory" of rate-making valuation through the series of U. S. Supreme Court decisions which culminated in the Hope Case. With puckish reverence he referred to the solemnity of Supreme Court decisions which must be taken as infallible guides, however temporary. In this case the "moving finger" of the Supreme Court had written some support for the reproduction cost theory in the McCardle Case (1926). But the "moving finger moved again" and "the whole hand had changed in the interim." But Judge Reis failed to find in the Hope Case in 1944, or other cases leading up to it, any justification for the idea that a regulatory commission can dispense with any finding of rate base whatever. He said:

> But there is nothing—no criterion—no guide—no finger to point the way—no beacon to light the path. To make the metaphors more miserably metaphorical, there is not the flicker of a match! We fly blind. . . . If the Wisconsin commission is sound in its stand that all it need essay is that its prescribed rate is "reasonable"—then the dilemma is inevitable: either judicial review becomes impotent because there is nothing tangible for a court to "review" and thus the commission's discretion over rates becomes unbridled, or else the whole affair is dumped into the court's lap for the judge to weigh the evidence and the judge to decide the reasonable rate (and in that event we might as well abolish the commission).
>
> Either horn of this dilemma impacts a crash into the ideals which both commissions and courts of this state have held since the beginning of regulation.

ANOTHER point in the opinion dealt with the need for separate findings of fact and conclusions as required by the state Administrative Procedure Act passed in Wisconsin in 1943. The commission's opinion was found not to have squared with this statute.

Will the Reis decision mean the end of the regulatory battle of Two Rivers? As already indicated, a further appeal is likely to higher courts. Judge Reis, formerly a counsel of the Wisconsin board before he became involved in the "tenacle-clawing vicissitudes of the bench," invokes the spirit of his former colleagues (called by name "Dave Lilienthal and 'Cap' Krug") to witness that the Wisconsin commission in the Two Rivers Case has attempted to venture far afield from the original pioneer spirit of regulation in that state. It seems in every way a persuasive as well as unusual judicial document.

Washington and the Utilities

Deficiency Fund Request

PRESIDENT Truman on December 12th sent a special message to Congress containing the long-awaited-for deficiency funds for the Reclamation Bureau. The President asked Congress to provide something less than $30,000,000 to take care of four projects on which construction might otherwise stop for lack of funds at the present rate of spending. The four projects and the amounts sought for each were: Columbia river basin, $11,725,000; Central Valley project, $10,700,000; Colorado-Big Thompson, $4,150,000; and Davis dam project in Arizona, $2,800,000.

Since this amount is about $10,000,000 less than requested by the Reclamation Bureau, it was believed that an accord had been reached whereby the smaller amount will be approved without too much opposition from the Republican majority in Congress. The President's request was turned over to the Interior Department's subcommittee on the House Appropriations Committee which held a closed session on the subject December 13th. Some of the Republicans are still smarting over the pace of the Reclamation Bureau disbursements and the threats of shutdown which have built up pressure from fearful voters in the areas affected. However, all this is likely to boil down to some sharp lecturing of Reclamation officials. Congress passed a supplemental deficiency bill, granting more than the President requested, before adjourning for the Christmas recess.

Economy Bloc Marks Time

SPEAKING of inspired pressure to make Congress keep open the gates of Federal appropriations, the bipartisan economy bloc in Congress is going to make a brave try to effect new economies in Federal spending during the year 1948. Led by Representative Taber (Republican, New York) the slash-the-budget brigade fell far short of its objective of a $6,000,000,000 economy cut at the last regular session of Congress. Furthermore, 1948 being an election year, practical observers do not expect that much, if any, additional economies can be effected. But Representative Christian A. Herter (Republican, Massachusetts), aided and abetted by a Democrat from the other house of Congress, Senator Byrd of Virginia, thinks he may have the formula for putting the net over some of the wilder advocates of Federal spending in the future. It is a long-range performance.

If the Herter plan works out it may well save far more millions of the taxpayers' money in the years to come. Stated briefly, Herter plans to take action against the great bureaucratic lobby which has for months sabotaged every movement for economy in government spending before it even gets under way. The Committee on Expenditures in the Executive Departments is going to look into this type of activity to see if there have been violations of the law which forbids Federal employees to influence legislation by Congress. Out of these hearings there may be formulated a plan or pattern for restraining and disciplining self-perpetuating bureaucratic dynasties.

Representative Harness (Republican, Indiana) already has promised to call the Federal Power Commission before his subcommittee on Publicity and Propaganda, to explain its "propaganda" activities, some time this month.

Exchange Calls And Gossip

FCC Probe Hinges on New Chairman

WILL there be a congressional investigation of the Federal Communications Commission? That appears to be the number one question in communications for the youthful year 1948. The answer has implications and complications both in the regulatory and political field.

Indiana's Republican Senator Capehart has called for a probe of the commission to look into that FCC-Federal Bureau of Investigation controversy which so disturbed the commission early in December. On that occasion, it will be recalled, the commission publicly repudiated the stand of leftist Commissioner Durr, who had opposed the FBI's forwarding information of subversive activities of persons who held or sought radio licenses. Actually, Capehart sought the investigation of Commissioner Durr, who, he charged, was "derelict in his duty in not making efforts to see that the 'tips' or 'leads' furnished by the FBI were thoroughly explored."

The Capehart blast reawakened interest in a probe which has held fascination for some Congressmen for years. There exists a strong bipartisan bloc, mostly in the House of Representatives, which has advocated for some time a thorough airing of the FCC. Ever since the wartime probe of that agency by a special House committee got all tangled up in personalities, side issues, and White House whitewash, congressional suspicion of FCC has smoldered. So far as the Senate is concerned, the tendency may be to keep away from formal investigation and concentrate on statutory change of the Federal Communications Act, via the White-Wolverton Bill.

SENATOR Capehart's denunciation of Durr may have been launched with the purpose of routing the ultra liberal commissioner off the FCC bench before his term expires next June. But the key to the whole investigation seems to be the presidential appointment of a new FCC chairman. It is likely that if the President selects a moderate, middle-of-the-road Democrat whom the Senate could confirm without much fuss, then FCC might well escape congressional scrutiny. But if the President picks out a rabid New Deal partisan, as he has indicated he might do, the confirmation might be hard bought at the price of a full-scale investigation with all the trimmings. Then, too, if three FCC commissioners step down in favor of other employment in the near future, as also has been rumored, Congress would have little left to investigate, so far as personalities are concerned.

Labor Groups Form For Political Action

NINETEEN FORTY-EIGHT is going to be a vital year in communications labor. All of the major telephone unions are planning political activity of a sort to "reward their friends and punish their enemies," per advice of the grand old man of labor, Sam Gompers. Of course, the CIO's Political Action Committee will feature demonstrations aimed at defeating the men who voted for the Taft-Hartley Act. Political action for CIO groups is nothing new. But, for the first time, both American Federation of Labor unions and the independent Communications Workers of America are venturing into the political arenas.

Both groups so far are wary of the new provision in the Taft-Hartley Act which prevents unions from spending money from their treasuries, without membership approval, to promote their candidates and oppose their rivals. Instead, voluntary contributions will be solicited from the members. As yet no specific political effort by the AFL's International Brotherhood of Electrical Workers, the principal AFL communications unit, has been scheduled. CWA, however, probably realizing its political naïvete, held a week-long orientation meeting in Washington, D. C., last month at which every phase of the operation was studied. A 30-man legislative committee heard experts explain ways and means of political maneuvering, and each committeeman tried his wings on his own Congressman on Capitol Hill while the meeting was in session.

CWA apparently will follow the CIO school of action in politics. The meeting was addressed by Indiana State Senator Charles Fleming, who is also president of a Hammond, Indiana, local of the Oil Workers International Union and a CIO state director in Indiana. Fleming outlined the necessary steps of action, from forming local committees, checking candidates, and keeping records on legislators' voting. Then he concluded: "But most important of all is to get our own people running for office. It is better to have our own members and others from labor in the legislature than it is to pay lobbyists to do a job for us." Coming from a man who is a minority power in the state legislature, that seemed to be seasoned advice. Senator Fleming outlined his losing fight in opposition to the new Indiana state law prohibiting public utility strikes. He labeled the statute "The most vicious piece of antilabor legislation in the country."

The keystone of CWA's political activity will be, of course, efforts to repeal or modify the Taft-Hartley Act. Youthful Representative Kennedy of Massachusetts told the delegates that chances of doing anything so epochal in the 80th Congress seemed "doomed." Then he gave a pretty accurate summing up of the principal points of union lobbying interest. Said he: "It is up to organized labor to keep on fighting for social legislation — laws on housing, minimum wages, extension of social security. That not only helps labor, but the public welfare as well."

The CWA legislative committee put itself on record as favoring several amendments to the Fair Labor Standards Act, which is now under consideration by the House Education and Labor subcommittee. One suggestion would limit exemption from overtime pay provisions to those professional, executive, and administrative employees in telephone companies who earn more than $400 a month. Another called for the elimination of the statutory exemption from minimum wage laws of telephone operators at exchanges having 500 stations or less. Later in December, Representative Miller, Democrat of California, introduced a bill (HR 4709) which would eliminate the 500-station exemption. The bill was referred to the House Labor Committee, which is due to report some kind of an amendatory bill during the new session.

ASIDE from the legislative picture, communications unions will be busy in the courts. The AFL's Commercial Telegraphers Union appeared headed for a legal showdown over the "public welfare" provisions of the Taft-Hartley Act, if it goes through with its proposed pre-Christmas strike. Union members had voted 10 to 1 to strike all telegraph services at the height of the Christmas message rush, after Federal efforts at mediation broke down. The unions insisted that there was no hope of staving off a walkout so long as the Western Union Telegraph Company made no counteroffer to their wage demand of an additional 15 cents an hour. It was doubtful whether President Truman would invoke the utility provisions of the new Labor Relations Act, but the company was due to seek an injunction to halt the walkout if it started. Under the act, the President could call for a special board of inquiry and get an injunction that would suspend

the strike for as long as eighty days.

It could be noted that Western Union was operating in the black after the first ten months of 1947. Net income as of October 31st amounted to $8,262,581, compared with a deficit of $11,109,316 for the same period last year. The improved financial results were judged to be due to higher telegraph rates, a larger volume of business in the spring because of the telephone strike, and some increase in operating efficiency. But November looked like a bad month, with five week ends and three holidays cutting down business volume and at the same time requiring overtime pay. December, with an ominous strike threat, could have gone either way. Some wage concessions from Western Union seemed inevitable.

OTHER court action seen as a strong possibility for unions includes tests of dozens of state antiutility strike laws which were passed during 1947. The first round of a test of the New Jersey statute preventing utility walkouts was lost by the Traffic Telephone Workers Federation, an independent operators' group. The union is involved in a suit in chancery court within the state brought by the state attorney general, which grew out of last spring's telephone walkout. The union attempted to by-pass the state tribunals and appealed directly to the U. S. Federal court. When the Federal court refused to act prior to state court action, the union went to the U. S. Supreme Court, but found no solace there. Last month the high court found its jurisdiction lacking, and sent the case back to its original site, New Jersey Chancery Court. Now will follow the slow progress of the suit through state channels and perhaps eventually back to the Supreme Court again. This pattern is due to be repeated in many states as unions challenge the validity of new laws in the public utility field.

CWA also prepared for court appearances on an entirely different matter. Last month two renegade units of the old National Federation of Telephone Workers, which gave way to the present CWA last June, sued in Federal District Court in Washington, D. C., for an accounting of the funds involved in the switchover. The American Union of Telephone Workers, representing 22,000 Long Lines operators in the Bell system, and the Association of Communications Equipment Workers, representing 20,000 Western Electric installers, obtained a 10-day restraining order, tying up the funds of the old union which are now going into the financial structure of the new CWA. The deserters want the NFTW funds split up among the unions (including themselves) who made up the old organization. CWA President Beirne called the litigation "a nuisance suit."

Ave Atque Vale

TELEPHONE industry men will note with interest the resignation of Leon Jourolmon, Jr., from the Tennessee Railroad and Public Utilities Commission, effective January 1, 1948. Jourolmon said he would assist the city of Kansas City, Missouri, in opposing the rate increase for telephone service in that state asked by the Southwestern Bell Telephone Company. He plans to open a law office in Nashville after his resignation. Although state administration leaders hinted that Jourolmon would not be named on the administration's ticket at this year's election time, Jourolmon stated that he had been authorized to say that he would have been on the ticket if he had not resigned. Jourolmon was one of the three Tennessee commissioners who recently turned down a rate increase request of Southern Bell Telephone & Telegraph Company in that state. He wrote a concurring opinion in the case which advocated reducing, rather than raising telephone rates.

Incidentally, more than the usual amount of public interest in the Missouri case is being aroused as a result of the prominent coverage of the rate hearings given by the *St. Louis Post-Dispatch*. The newspaper has featured detailed reporting on the case, and has adopted a skeptical editorial attitude toward Southwestern Bell's contentions.

Financial News and Comment

By OWEN ELY

Year-end Review of Progress With Holding Company Integration Plans

THE following is a brief summary (in alphabetical sequence) of holding company plans for recapitalization and integration to effect full compliance with the Holding Company Act. Only a few systems—American Gas & Electric, Community Power & Light (now Southwestern Public Service), Columbia Gas & Electric, Engineers Public Service, New England Gas & Electric, New England Electric, and a few smaller systems—have effected complete compliance with the act. It is estimated that, at the recent rate of progress, it may require three to five years to complete the entire program. Market price changes, revisions of plans, reconciliation of conflicting claims, and settlement of issues of all sorts in the SEC and the courts tend to delay proceedings.

American & Foreign Power—The amended management plan was modified by SEC order to favor the first preferred stocks at the expense of the second preferreds. Hearings will begin in the Federal court at Portland (Maine) January 6th. The Norman Johnson Committee representing the second preferred stockholders may continue the fight to obtain better terms, assuming that it can gain substantial support from large stockholders.

AMERICAN LIGHT & TRACTION—The company has modified its latest plan, along lines suggested by the SEC staff, so as to complete its disposal of Detroit Edison by the end of 1948 and retire at least part of its preferred stock by inviting tenders at $33. While the huge pipe-line program (the construction of which would not be completed until around 1951-2) has not yet been fully approved, the SEC has permitted the company to begin the construction. (See also United Light & Railways.)

American Gas & Power—The merger with the subsidiary, Minneapolis Gas Light, which was approved by the SEC and a Federal court, is now tied up by the appeal of debenture holders.

American Power & Light—The company has made considerable progress in grouping its Texas subsidiaries and those in the Pacific coast area, as well as the refinancing of other subsidiaries. However, the integration plan of 1946 has become obsolete and the management is now preparing a new one. It is conjectured that, with little or no break-up value for the common stock under present conditions, the new plan will return to the allocation method for apportioning assets between preferred and common stocks. A plan of this kind was recently filed by a stockholder, under which four stocks would be assigned to preferred stockholders, one to Electric Bond and Share, and the remaining four to public holders of the common stock.

American Water Works—The company has retired its preferred stocks by sale of its waterworks properties, and has filed dissolution papers. One share of

West Penn Electric will probably be distributed to each share of Water Works, perhaps within the next few weeks. The latter company will then become the top system company and some further changes will have to be worked out to simplify relations with the several remaining subholding companies. It is expected that West Penn will pay dividends in a range of $1-$1.50.

CENTRAL PUBLIC UTILITY—No definite dissolution plan has been worked out yet but the subholding company, Consolidated Electric & Gas, is making considerable progress.

Cities Service — The company must dispose of its Ohio subsidiaries, sell its holdings in Public Service of New Mexico, integrate Arkansas Natural Gas, etc. There is no definite timetable. Improved earnings from oil and gas overshadow the utility operations.

Continental Gas & Electric—The company will probably retire its bank loan in 1948 with cash received from United Light & Railways; eventually a merger of the two companies would seem logical.

Consolidated Electric & Gas — The company is now retiring its preferred stock through an exchange for Atlanta Gas Light. It may eventually dispose of remaining scattered small subsidiaries in the United States, retaining foreign interests (through the subholding company, Islands Gas & Electric). Eventually a merger of the three holding companies would seem a logical development, with an all-common recapitalization, but no plans have been announced.

Commonwealth & Southern—A package exchange plan to retire the preferred stock is now before the SEC, but owing to the decline in the market value of the package an opposition plan has recently been filed. The Commonwealth and United Corporation plans may eventually furnish a court test of the so-called "investment value" theory, under which the earnings and dividends represented by a package of securities are used to appraise its value, rather than the current market prices or market yardsticks.

Electric Bond and Share—The company expects to continue as a holding company, retaining its interests in American & Foreign Power (see above) and Ebasco Services, Inc. Other utility holdings will gradually be sold or distributed to stockholders.

Electric Power & Light — The 1946 package exchange plan to retire the preferred stocks is now obsolete, and an amended plan is expected to be filed with the SEC, probably early in 1948. Under the old plan, the $7 first preferred stock would receive 10 shares of United Gas, 9 shares of Almno System, or $192 cash, as compared with the claim for par and arrears of approximately $190. It seems probable that the new plan, when issued, will be based on the "investment value" theory, and the cash offer may be eliminated. At the time the previous plan was submitted United Gas was around 19; currently it is around 18¼, with earnings and dividends above those of last year. Earnings of the Almno subsidiaries (which use natural gas for fuel) also are running well over last year.

GENERAL PUBLIC UTILITIES — This successor company to the old Associated Gas system has made remarkable progress in clearing up the complex setup devised by its predecessor organization. The only remaining subholding company of any importance is Associated Electric. Eventually the latter may be merged with GPU; first it will probably sell Manila Electric (now making a rapid comeback) and retire some of its debentures. GPU itself will sell Staten Island Edison, after the latter's recapitalization is approved. It also may have to sell one or two other properties, though the SEC has not issued clear-cut instructions as yet. Completion of this program may require several years.

International Hydro-Electric—Three dissolution plans were submitted to the SEC last summer. Recently these have all been amended, and a fourth proposal has been filed providing for payment of the debentures, all in cash. Details of the revised Carter plan are not yet available. The company's principal holdings are Gatineau Power, New England Electric,

and Eastern New York Power. Taking Gatineau at 15 and New England at 12 (recent market prices), and Eastern New York at an estimated value of 25 (it earned $2.13 a share in the twelve months ended June 30th), estimated break-up values compare as follows with recent prices:

	Bonds	*Pfd.*	*"A"*
Recent Prices	64	59	7¼
Est. Break-up Values:			
Trustee (amended) .	$565	$80	$11
Todd Com. (amended)	360	*	*

* Not available.

The trustee and Todd plans obviously follow the lines of investment value theory; while the bonds have a face value of $700 (following payment of $300 in cash) both "packages" fall considerably short of this amount in estimated market value. In the new Todd plan (submitted by Ganson Purcell, former SEC chairman) estimated earnings for the bond package are stated to be 7½ per cent on $700, and dividend income 5.9 per cent, as contrasted with the 6 per cent interest rate.

LONG ISLAND LIGHTING — Both this company and its subsidiary, Kings County Lighting, must be recapitalized, and the New York Public Service Commission has jurisdiction jointly with the SEC. But the two commissions have quarreled over methods of recapitalization; the state commission leans toward a priority basis while the SEC gives some weight to the claims of common stockholders. The Kings County Lighting Case is now before the Federal courts, and until this case is settled the Long Island Lighting plan may have to wait its turn. The state commission, in a lengthy decision some months ago, disagreed with the proposed Long Island plan.

Middle West Company — About half of this system (represented by the subholding company, Central & Southwest) has been disposed of. Distribution of other holdings will probably be completed within the next six to nine months. The SEC recently ordered changes made in the dissolution plan for a subholding company, North West Utilities. (See below.)

New England Public Service—With the aid of a bank loan the company has now retired its prior preferred stocks, although the claim for redemption premiums remains to be decided by the SEC. Following settlement of this claim, the management will probably file a plan to allocate remaining assets (after payment of the bank loan) between the plain preferred and common stocks. The market prices of Public Service of New Hampshire, Central Maine Public Service, and Central Vermont Public Service have been adversely affected by floods, droughts, and stock financing, hence completion of the program may prove slow, particularly if an allocation formula is debated in the courts.

Niagara Hudson Power — The company applied to the New York Public Service Commission last spring for permission to merge its three principal subsidiaries; to effect this a compromise will probably be reached with Chairman Maltbie of the state commission regarding plant write-offs, increased depreciation reserves, etc. Hearings have been in progress and a decision may be reached by spring. Proceedings before the SEC are not expected to prove lengthy. Completion of the merger would be followed by a plan to sell sufficient stock of the merged company to retire the remaining bank loan (now being reduced) and the preferred stocks. (Arrears on the first preferred were cleared up before Christmas, and, presumably substantial payments will be made against the second preferred arrears.) Distribution of remaining subsidiary stock to Niagara common would complete the tentative program. Final details have not yet been settled, however.

NORTH WEST UTILITIES—The SEC had given the company until December 28th to increase the allocation of Wisconsin Power & Light shares to each share of North West 7 per cent prior lien preferred by 1 share, to 11½ shares; the 10-share allocation to the 7 per cent pre-

ferred was approved. Public holders also would receive $7 cash dividends from December 31, 1946, to the effective date of the plan.

North American Company—The company is currently giving stockholders large blocks of Potomac Electric Power and Wisconsin Electric Power; remaining utility holdings may be distributed during the first half of 1948, although no final program has been announced. The company controls valuable nonutility properties and will remain in business.

North American Light & Power—The preferred stock will be paid off with proceeds of the pending sale of Northern Natural Gas (plus cash on hand). The plan now before a Federal court proposes to pay off the common stock at $7.50 a share or .3 share of Illinois Power.

Northern New England — This is a small, inactive holding company which owns a large block of New England Public Service common stock and a few miscellaneous assets. Eventually assets should be distributed to common stockholders. (There are no senior claims.)

Northern States Power — A great many plans have been presented to the SEC and the Federal court at Minneapolis for dissolution of the company. The problem is to allocate the common stock of Northern States Power of Minnesota among the preferred, class "A," and class "B" stockholders. One issue is the fair value of the Minnesota stock, which is entirely held by the Delaware company. It was rumored a few weeks ago that a new compromise plan was being prepared.

Philadelphia Company — The SEC wants this subholding company in the Standard Gas system dissolved, but the company is contesting this. In valuing the company's assets an important factor is the claim for some $25,000,000 against Pittsburgh Railways. While the latter is in bankruptcy, it accumulated almost this amount in cash as a result of wartime prosperity. Proceedings both in the bankruptcy court and the SEC seem likely to drag along for some time. A special master is being appointed in the Railways Case, and by the time he reports to the court some of the cash assets may have been dissipated, due to the unfavorable earnings trend of the transit business generally.

Public Service of New Jersey—The amended plan filed sometime ago with the SEC represented a compromise between various interests including United Corporation. However, the SEC has not yet passed on the plan, and meanwhile there has been a decline in system earnings.

STANDARD GAS & ELECTRIC and *Standard Power & Light* — The affairs of these two holding companies are in a very muddled condition, as indicated by current press reports from Philadelphia. When proxy and election problems are settled and the management personnel for 1948 established, the company will doubtless proceed to sell sufficient stock (probably of the Oklahoma or Wisconsin subsidiaries) to retire its bank loan. The next step will be to devise an allocation formula among the prior preferred, second preferred, and possibly the common stock. (See also Philadelphia Company above.)

United Corporation — A mandatory plan for retiring the preferred stock was filed with the SEC last summer, but the staff has not yet completed its report. Meanwhile the value of the exchange "package" has declined somewhat.

United Gas Improvement—The company plans to retain its gas subsidiaries, and to dispose of other utility investments, but there is no definite timetable.

United Light & Railways — A joint plan for American Light & Traction (see above) and United Light was filed with the SEC some months ago, and later was amended to meet indicated commission views. The company proposes to distribute and sell its entire holdings of American Light preferred and common during 1948, using proceeds to retire its bank loan (also that of its subsidiary, Continental Gas) and its preferred stocks. The SEC has not yet approved the entire plan but appears sympathetic. No court confirmation will be required.

RECENT FINANCIAL DATA FOR PRINCIPAL ELECTRIC-GAS OPERATING COMPANY STOCKS

		12/10/47 Price	Yield	Earned (12 Mos.)	P-E Ratio
Revenues $50,000,000 and over					
B	Boston Edison ($2.40)	40	6.0%	$2.51-j	16.0
S	Commonwealth Edison ($1.40)	26	5.4	2.08-s	12.5
S	Consol. Edison of N. Y. ($1.60)	21	7.6	1.61-s	13.0
C	Consol. Gas of Balt. ($3.60)	69	5.2	5.51-s	12.6
S	Consumers Power ($2)	30	6.7	2.81-o	10.7
S	Detroit Edison ($1.20)	21	5.8	1.49-o	14.1
C	Duke Power ($3)	75	4.0	8.09-d	9.3
S	Pacific G. & E. ($2)	35	5.7	2.55-s	13.8
S	Penn. Power & Light ($1.20)	19	6.3	2.01-o	9.4
S	Phila. Electric ($1.20)	22	5.5	1.80-s	12.2
S	So. Calif. Edison ($1.50)	28	5.4	1.72-j	16.2
	Averages		5.7%		12.8
Revenues $10-$50,000,000					
O	Atlantic City Elec. ($1.20)	17	7.1%	$1.40-s	12.1
S	Birmingham Elec. ($1.20)	14	8.6	1.62-o	8.6
S	Carolina P. & L. ($2)	29	6.9	3.12-o	9.3
S	Central Hudson G. & E. (52¢)	8	6.5	.55-s	14.6
O	Central Maine Power ($1.20)	18	6.7	1.54-o	11.7
S	Cincinnati G. & E. ($1.40)	24	5.8	1.93-s	12.5
S	Cleveland Elec. Illum. ($2)	36	5.6	2.46-s	14.6
S	Columbus & S. Ohio Elec. ($2.80)	38	7.4	4.20-s	9.0
O	Connecticut L. & P. ($4)	57	7.0	3.50-o	16.2
S	Dayton P. & L. ($1.80)	26	7.0	2.61-s	10.0
O	Delaware P. & L. ($1)	17	5.9	1.66-s	10.2
S	Florida Power Corp. ($1)	13	7.8	1.63-s	8.0
S	Gulf States Util. ($1)	14	7.2	1.65-s	8.5
C	Hartford Elec. Light ($2.85)	54	5.3	2.97-d	18.2
S	Houston Lighting ($2)	39	5.1	2.74-o	14.2
C	Illinois Power ($2)	25	8.0	3.84-j	6.5
S	Indianapolis P. & L. ($1.50)	22	6.8	3.54-s	6.2
O	No. Indiana P. S. ($1.20)	15	8.0	2.05-o	7.3
S	Ohio Edison ($2)	29	6.9	3.13-o	9.3
S	Potomac Elec. Power (90¢)	14	6.5	.88-s	15.9
S	Pub. Ser. of Colo. ($1.65)	33	5.0	4.65-m	7.1
O	Pub. Ser. of Indiana (Stock)	37	7.6	4.66-o	7.9
O	Public Service of N. H. ($1.80)	30	6.0	2.21-o	13.6
O	Puget Sound P. & L. (80¢)	11	7.3	1.98-s	5.6
O	San Diego G. & E. (80¢)	14	5.7	.94-o	15.0
O	Southwestern Pub. Ser. ($1.60)	23	7.0	2.50-o	9.2
C	Utah Power & Light ($1.20)	22	5.5	2.45-o	9.0
S	Virginia Elec. Power (x)	15	—	1.58-o	9.5
S	Wisconsin Elec. Power ($1)	16	6.3	1.67-s	9.6
	Averages		6.7%		10.6
Revenues under $10,000,000					
C	Calif. Elec. Pr. (60¢)	7	8.6%	.73-s	9.6
O	Central Vermont Pub. Ser.	9	—	.69-o	13.0
O	El Paso Electric ($1.60)	23	7.0	2.49-s	9.2
S	Empire Dist. Elec. ($1.12)	12	9.4	1.80-s	6.7
C	Mountain States Pr. ($2.50)	29	8.7	3.57-a	8.1
C	Penn Water & Power ($4)	53	7.6	4.73-d	11.2
O	Sierra Pacific Power ($1.60)	23	7.0	1.93-s	11.9
C	Tampa Electric ($2)	32	6.3	2.43-o	13.2
	Averages		6.8%		10.3
	Averages, three groups		6.4%		11.2

RECENT FINANCIAL DATA FOR PRINCIPAL ELECTRIC-GAS HOLDING COMPANY STOCKS

		12/10/47 Price	Yield	Earned (12 Mos.)	P-E Ratio
	Integrated Systems				
C	American Gas & Electric ($1 and stock)	33	7.1%	$3.88-s	8.5
C	Central & Southwest (70¢)	10	7.0	1.22-d	8.2
S	New England Elec. System ($1)	12	8.3	1.48-d	8.1
O	New England G. & E. (80¢)	12	6.7	1.35-s	7.7
	Averages		7.3%		8.1
	Systems in Process of Integration				
	Common Stocks—Dividend Paying				
C	American L. & Tr. ($1.20)	16	7.5%	$1.71-s	9.3
C	Cities Service ($2)	36	5.6	6.41-d	5.6
C	Electric Bond & Share ($1)	11	9.1	—	—
S	General Pub. Util. (80¢)	12	6.7	1.58-s	7.6
S	North American (Cash and Stock)	18	—	1.85-PF	9.6
C	Philadelphia Co. (55¢)	10	5.5	.75-j	13.4
S	Pub. Ser. of N. J. ($1.40)	20	7.0	2.54-d	7.9
S	United Gas Impr. ($1.30)	21	6.2	1.73-s	12.2
C	United Lt. & Rys. ($1)	20	5.0	3.28-s	6.1
O	West Penn Power ($1.50)	28	5.4	2.15-s	13.0
	Averages		6.4%		9.4
	Common Stocks—Nondividend				
S	American P. & L.	8	—	3.79-a	—
S	American Water Works & Elec.	16	—	3.10-j	5.1
S	Commonwealth & Southern	2½	—	.65-o	3.9
S	Electric P. & L.	16	—	4.24-s	3.8
S	Inter. Hydro-Elec. "A"	6½	—	—	—
C	Long Island Lighting Co.	¾	—	—	—
C	Middle West Corp.	14	—	—	—
O	New England Pub. Ser.	3	—	—	—
C	Niagara Hudson Power	8	—	1.40-s	5.7
C	North American L. & P.	7	—	—	—
S	United Corp.	2½	—	—	—

		12/10/47 Price	Yield	Approx. Arrears
	Preferred Stocks—Dividend Paying			
S	United Corp. $3 Pref.	42	7.2%	—
S	Philadelphia Co. $6 Pfd.	99	6.1	—
S	Amer. & For. Pr. $7 Pfd.	91	7.7	$74
S	Amer. P. & L. $6 Pfd.	76	7.9	44
S	Commonwealth & So. $6 Pfd.	97	6.2	19
S	Electric P. & L. $7 Pfd.	149	4.7	90
C	Niagara Hudson Pr. 5% 1st Pfd.	99	5.1	—
O	Nor. States Pr. (Del.) 7% Pfd.	100	7.0	10
	Average		6.5%	
	Preferred Stocks—No Current Payments			
C	Electric P. & L. $7 2nd Pfd.	137	—	$107
C	Inter. Hydro-Elec. $3.50 Pfd.	58	—	47
O	New England P. S. $7 Plain Pfd.	103	—	109
C	North Amer. L. & P. $6 Pfd.	189	—	92
S	Standard G. & E. $7 Prior Pref.	104	—	96
C	Standard P. & L. $7 Pfd.	110	—	95

x—Dividend payments deferred under Engineers Public Service plan. B—Boston Exchange. C—Curb Exchange. O—Over counter or out-of-town exchange. S—New York Stock Exchange. d—December, 1946. f—February, 1947. m—March, 1947. j—June, 1947. jy—July, 1947. a—August, 1947. s—September, 1947. o—October, 1947. PF—Pro forma current earnings.

Subscription Rights to Common Stock Offerings

IN connection with the heavy construction program of 1947-51, by which the utility companies hope to catch up with wartime and postwar growth of their business, there have been a large number of stock offerings in 1947. There also have been a smaller number of offerings representing the disposal of holding company blocks of stock in subsidiaries. About 80 per cent of all the "new money" stock was offered to stockholders. During the ten months ended October 31st the combined sales of common stocks through offerings to stockholders aggregated nearly a quarter of a billion dollars, of which nearly one-half was accounted for by holding company sales. (See the accompanying table below.)

While the list looks fairly imposing, the amount of common stock issued for construction purposes was all too small in relation to the total program. Following is a summary of the character of new money financing during the first nine months of 1947 by all classes of utility companies:

Debt Securities:		*Totals*
Mortgage Bonds		
Public Issues	19%	
Private Issues	7	
Total Bonds	26%	
Debentures		
Public Issues	57	
Private Issues	1	
	58	84%

COMMON STOCK SUBSCRIPTION RIGHTS ISSUED BY UTILITY COMPANIES, JANUARY-OCTOBER, 1947

Date of Offer			*Shs. (000)*	*Sub. Price*	*Amount (Mill.)*	*No. Days*	*Underwriters' Compensation**
Jan.	9	Pacific Tel. & Tel.	328	100	$33	32	—
	24	Birmingham Gas	46	8	—	32	—
	28	Inter-Mountain Tel.	48	10	1	10	NA
	31	American G. & E. (a)	840	33¼	28	18	—
	31	Penn. P. & L. (a)	1,052	17½	18	18	—
Feb.	26	Southwestern P. S.	64	34½	2	10	1.4
Mar.	20	Connecticut L. & P.	164	50	8	14	—
	28	Cleveland Elec. Illum. (b) ..	1,715	15	26	61	—
Apr.	2	Missouri Utilities	15	20	—	7	NA
	2	New England G. & E.	479	9	4	14	—
	26	Houston L. & P.	259	37½	10	24	—
May	13	Pacific G. & E.	626	25	16	49	—
	13	Cinn. & Sub. Bell Tel.	101	50	5	51	—
June	4	Gulf States Utilities (c)	1,910	11½	22	17	—
	10	Peninsular Telephone	16	33	1	21	—
	21	Consol. Natural Gas	546	37½	20	21	—
July	2	Kansas-Neb. Natural Gas	57	10	1	30	—
	10	Florida Power	100	14	1	14	4.3
Aug.	22	South Atlantic Gas	22	8½	—	21	NA
Sept.	4	Colorado Central Power	10	30	—	33	4.1
	9	Capital Transit	120	20	2	35	—
	17	Iowa Public Service	110	15½	2	22	—
	27	American Water Works (d)	2,687	8	22	10	6.3
Oct.	2	Carolina Tel. & Tel.	21	100	2	30	—
	2	Southern Colo. Power	30	9½	—	20	10.5
	17	Duke Power	253	82½	21	18	—
	17	Derby G. & E.	44	19	1	18	—
	30	Carolina P. & L.	91	30	3	22	3.8

* Per cent of subscription price (where issues underwritten).
(a) Offered to common stockholders of Electric Bond and Share.
(b) Offered to stockholders of North American Company.
(c) Offered to common stockholders of Engineers Public Service.
(d) Offered to common stockholders of American Water Works & Electric.
NA—Not available.

Preferred Stock		6
Common Stock:		
Direct Sales to Public	2	
Sales through Subscription Rights	8	10
		100%

This tabulation does not include bank borrowings, many of which are purely temporary until permanent financing can be arranged, while others are serial loans which will presumably be retired over a period of years out of earnings. Allowing for term bank loans, it is obvious that debt financing has been extremely heavy in relation to the total. The amount raised through preferred stocks was particularly small, despite the fact that yields for high-grade offerings have risen from a low of about 3½ per cent last year to a current rate around 4¼-5 per cent. During the early 1920's the utilities sold a vast amount of preferred stock locally, largely to their own customers, and this method of raising capital may again have to be resorted to; by eliminating underwriting charges the utilities could afford to give somewhat higher dividend rates.

WITH respect to common stock offerings, while the total is well under 10 per cent of all new money financing (including bank loans) as compared with the normal 25-35 per cent ratio of common stock and surplus to total capitalization, it should be remembered that all of the earnings devoted to construction work (and possibly some of the depreciation cash thus used) can be considered equity financing. Nevertheless, there is little doubt that thus far the finance program has been somewhat deficient in equity financing and much too heavy in debt raising.

1946 Statistics of Natural Gas Companies

IN the last issue of this department "Gas Facts," published by the American Gas Association, was reviewed. The Federal Power Commission has recently published "Statistics of Natural Gas Companies of 1946." Detailed 1946 income account and balance sheet figures are presented for 114 companies, together with composite figures for the industry for 1945-46.

The aggregate plant investment, after allowance for depreciation reserves, is a little under $2,000,000,000. Revenues are about $615,000,000, and service is supplied to about 4,000,000 customers. Assuming that these 114 companies approximately represented the industry, the natural gas business is about one-fifth the size of the electric light and power industry, both with respect to revenues and plant account.

The composite balance sheet for the natural gas companies shows a debt ratio to total capital of only 41 per cent as compared with 47 per cent for the electric light and power companies; and the proportion of preferred stock is also smaller —about 11 per cent compared with 16 per cent for electric utilities. While the common stock equity is about 48 per cent *versus* 37 per cent for electric companies, both industries carry about 18 per cent of revenues down to the balance earned for common stock. The explanation lies in the more favorable operating ratio for the electric companies.

THE arrangement in the FPC book seems a little puzzling, in that statistics on physical amounts are given a subsidiary position below the dollar figures. Thus gas revenues, customers, and sales are tabulated below the income account, and various other statistics are placed below "Gas Utilities Plant." The index heading "Gas Account" does not clearly indicate that it means figures for gas received and delivered.

The separation of the gas industry into several main groups—wholesale producers, pipe-line companies, and retail distributors—also would be useful.

It would also add to the value of the book if detailed data on rates and cost of service were added. It should be possible, for example, to compare rates for house heating and other classes of service for different companies.

What Others Think

Utilities and High Construction Costs

In an address before the Controllers Institute of America—1947 meeting held in October at Chicago—Leonard Spacek of Arthur Andersen & Company referred to the many problems related to high construction costs of utilities. Spacek commented on these problems relating to the economics of business, particularly with respect to the manner in which they affect the important divisions of management. He introduced his subject with the following:

> The causes of high construction costs are really beside the point now. Some of them were justified, some of them were not, but today we are suffering their effect regardless of their cause. I must also immediately admit that the problems of high construction costs for utilities would not be so difficult if they could be met under conditions such as those existing for unregulated businesses in general. But the problem existing for utilities is peculiarly applicable to utilities only and that brings us to the real obstacle involved—rate making.
>
> Businesses generally were relieved of price controls of the war period and as a consequence they were in a position to adjust prices to meet the constantly changing economic conditions confronting them. Ask any person on the street what price controls exist and no one will mention utilities, nor will they believe that of all 50 commodities making up the wholesale price index only 3 have remained constant or declined and 2 of these 3 are utility services.

Spacek said that he has yet to see this remarkable record publicized at any time. One of the reasons, he added, why this record has been maintained is because "two of its largest elements of cost, depreciation and return, have been based on property which is stated at price levels prevailing not only prior to World War II, but in fact in a large part at price levels prevailing before World War I." He cited the fact that nonutility businesses are worried about the cost of replacing property at present levels, "while depreciation is based on costs incurred before the war." It is necessary to keep in mind, he thinks, that the electric utility investment in property alone is equal to that of all manufacturing industry combined (excluding land in both cases), and that property investment in all utilities is almost double that of all manufacturing business. He wondered, therefore, if the single problem of depreciation on replacement property is so troublesome a problem to the whole manufacturing industry, whether the problems facing utilities where return as well as depreciation allowance is based on the same standard will not prove more expensive.

Spacek noted the announcement of President Oakes of the Edison Electric Institute, stating that the electric power industry alone will spend $5,000,000,000 in five years. The telephone industry has announced a construction program that runs into billions.

Of this, Spacek said:

> . . . The effects of this large investment are just now beginning to be felt and they will be felt by a downward trend in utility income generally due to absorbing the carrying cost of high-cost construction as well as high operating costs. While increased sales per consumer will be achieved, the income from this source will be more than absorbed by increased wages, materials, maintenance, and other out-of-pocket expenses. In addition to the fixed charges on reserve capacity of the present construction program, the utilities must contemplate replacing an ever increasing percentage of their plant due to ordinary wear, tear, and obsolescence. Based on mortality experience for utilities, the average utility will probably replace 20 per cent of its present property balance during the next ten years. Most of that property will be the oldest property and therefore the retirement will be at the price levels prevailing during the period from 1915 to 1930. The cost of replacing these routine retirements at present prices will be from twice to two-

thirds more than the original cost at which retired. The depreciation and return on this additional investment merely to maintain present service may absorb 30 per cent of present income available for preferred and common stock.

SPACEK believes that, in the event present prices prevail for the indefinite future, the cost of replacing all electric utility plants might easily soar as high as 150 per cent of the present original cost even after allowing for technological progress in the act of construction. He said:

. . . Present construction cost indices are running twice the cost prevailing in 1932 and 1933. The cost of replacement for gas utilities would probably be much greater and for telephone companies somewhat less because of the shorter-lived equipment. The carrying cost on the additional capital necessary to replace the plant would alone wipe out all present utility income being earned. The decline will come as rapidly as high construction replaces low construction costs, assuming that increased business is sufficient to absorb constantly increasing labor and material costs.

It is obvious, he finds, that rate increases are inevitable, and it was his belief that the most important question is, *"When* will the squeeze require an increase in rates and what standard of justification for increased income will be imposed on the industry?" Axillary questions asked: "Are increased rates to be dependent upon the original cost principle of rate making for their justification? If so, when will original cost justify the increase in rates?" Bearing directly on this, he stated:

. . . During the past fifteen or twenty years when the original cost principle of rate making has been enforced, we had a rapidly expanding industry and relatively stable prices so that the income from the growth of business always provided a greater return than was found to be fair for rate making and thus provided the necessary income to induce the public to buy utility securities. If this condition is reversed so that a utility may only increase its rates after it experiences a great need for an increase, and as soon as an increase is secured a deficiency in return again immediately begins to accumulate, the cost of capital will be so increased that this method of rate making will have to be revised for practical considerations.

Given an increase in rates, another hurdle is presented if the price levels taper off—utilities would then be the only industry to be increasing prices while all others would be somewhat reduced and stable. Thus, he says, the present situation would be exactly reversed, and would probably get much more publicity. He stressed the fact that

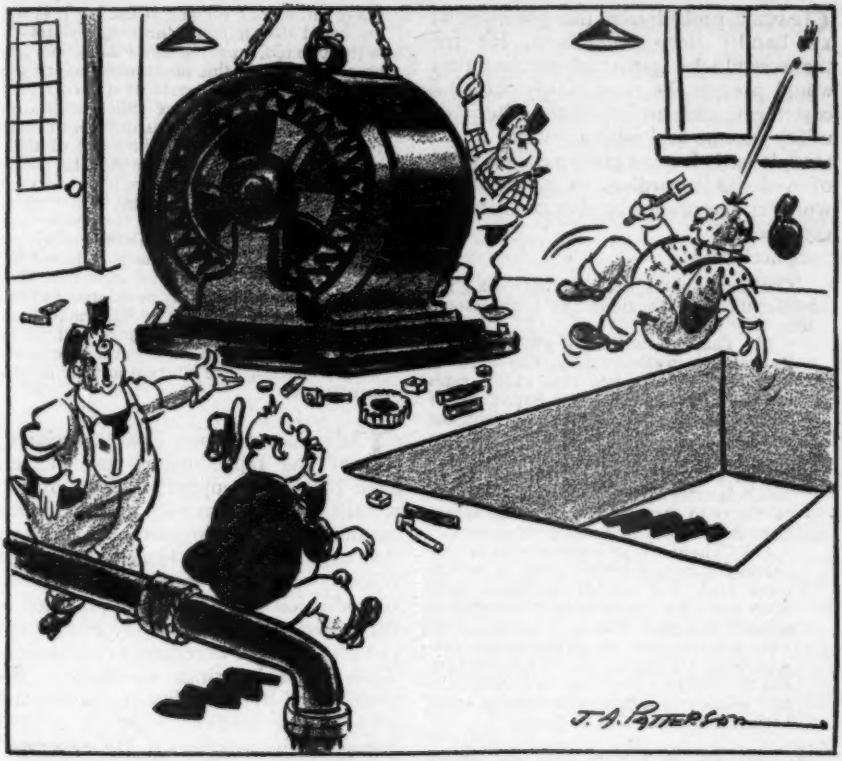
. . . Utility prices are out of step with our price economy today and they will be out of step tomorrow when conditions stabilize. But it will be a lot easier to get into step today —now—than to explain tomorrow why you are then out of step and need increases.

WHAT is the solution to this difficulty? He suggested the following:

First, under the original cost principle of rate making, your rates are really not confiscatory until the market value of securities falls below the book value of those securities after deducting acquisition adjustment costs. This is a rule-of-thumb measurement, but it is more apt to be favorable to the utility rather than unfavorable because of the inclusion of unused and useful plant, debt discount and expense, insufficient depreciation reserves, more working capital than allowable for rate making, etc. It assumes the composite earnings price ratio is the minimum return applicable to utilities and on the basis of present market appraisals that rate on an over-all average is a little less than 6 per cent before allowing for cost of financing. . . .

On an original cost basis of rate making, gross income may be decreased 11 per cent over-all before rates may be increased. This decrease would also amount to about 15 per cent of net income. That is, on the original cost principle, liberally applied, a 15 per cent reduction in net income must still be absorbed before rates can be increased. That means present equity security values would be diluted by the issuance of additional securities until aggregate market value of all securities approximates book value of all securities after deducting acquisition and plant adjustments.

SPACEK believes, if original cost is the proper test for measuring rates, present public utility equity securities should be considered as being overpriced. "It must also be kept in mind, if this were true and generally known by investors, the present earnings price ratio . . . would be increased so that the margin between market and book value would be immediately narrowed." He said:



"NORTHGATE'S GOT A BAD HABIT OF STEPPIN' BACK TO ADMIRE HIS WORK!"

I believe that most regulatory commission people feel there is some important fallacy in the original cost principle of rate making. Many who adhere to that principle do so because of precedent and the vehement belief among some that that is the only proper basis. Many have not attempted to prove its reasonableness or to explain the premise upon which they believe in the original cost principle. In the twenty-five years spent closely associated with the industry, I have not found anyone who is willing to accept the responsibility of explaining why original cost is fair. Most of the reason underlying the advocacy of the original cost principle of rate making is limited to (1) citing authorities by name that agree with that view, (2) that the rate base is stable and nonfluctuating, and (3) it is easy to administer as compared to reproduction cost. All of these points pertain to the practical aspects but none of these factors support or explain its fairness. In the Hope Case, the Supreme Court did not give reasons why the prudent investment basis was fair to utility investors as compared to other investors or did the briefs give such reasoning. About all that was decided was that prudent investment could be used. The fact that prudent investment principle has proved practical in California and Massachusetts is not conclusive as to its fairness.

He cited a "recent dissenting decision" of James Landis, chairman of the Civil Aeronautics Board (former chairman of SEC), which he said casts light on original cost rate making. Spacek noted:

Here is a man who has held very responsible positions in our government when the original cost principle of rate making was being advocated most strongly by government representatives. He has grave apprehension of all transactions involving the recognition of anything but original cost irrespective of price level represented by the cost involved or subsequent conditions.

SPACEK probed into the premises of Landis' deep convictions. He felt these would be important because they would present the reasons why original cost forms such an important criteria of utility income and why a "utility investors' dollar is forever given a ceiling value of a dollar regardless of its changing worth as determined by general economic conditions."

Spacek said:

> Chairman Landis' dissent provided a good explanation of his views. As I understand him, they were:
>
> (1) That the function of providing utility service is in effect a delegation of a governmental service, and that utility rates are little different than the imposition of a sales tax or some other form of impost or excise.
>
> (2) That our thinking must start from certain plain premises. That there is no valid claim as against the public to an opportunity to earn more than a fair return upon its investment; *i.e.* original cost.
>
> (3) "There can be no exactness in synchronizing a fair return with an investment base. The market speculates daily upon our (the commission's) inability to achieve this goal. But it is wrong for us (the commission) to accept defeat now with regard to our regulatory trust and admit that our own inefficiencies to hold rates and subsidy to a fair return are a sound basis for the creation of 'value.'"

It may be, he added, that the above doctrine is correct. It is the only one that supports original cost. If it is the pattern according to which utility rates are regulated, or the basis on which the utility business is run, it means, he said, "that the furnishing of utility service is tantamount to a concession granted by the government, and that as such you are performing a governmental service for which you have a right to tax to the extent of fair return on original cost." It means "that your right of so-called taxation is limited to your ability to get commissions to raise your so-called tax rate against public opinion." Spacek stated on this point:

> Why this doctrine should be accepted is something the public at large should approve. Commissions, generally, should be assisted in pointing out the doctrine that underlies it if the public has not and does not understand it. I believe the doctrine rests on a generally unfamiliar social concept but it is not my belief that is controlling—nor yours—it is the public's. In my opinion the public has no conception of this doctrine on which the original cost principle rests. If it is correct, I believe the sponsors have failed to inform the utility investors the consequences of these principles which underlie the value of their investments. SEC has never put the public on notice regarding the consequences of such a doctrine when securities were registered. It appears to me that SEC and the public have followed the method of valuing utility securities in the same way that is followed for any other securities. It is important that the public utility investors be informed of the reasoning made so clear by Chairman Landis. The consequences, I am sure, will not be favorable, but the public is entitled to know what restrictions are inherent in their investment value.

THE imperfections, Spacek declared, of the reproduction cost method have been well supported. One of the worst is the fact that we never *reproduce* anything. We so improve the product that such a concept is inaccurate, in fact valuable only in a static economy. The reproduction cost method of valuation is not a proper response to why a valuation of utility plant is necessary in regulation. This, he said, brings us back to the premises of public utility regulation and why neither method responds to that premise as he conceives it. He elaborated on this as follows:

> First, I believe utility service is no more a governmental function than retailing of groceries, banking, or other fields that cooperatives and government have participated in in one form or another. Second, the reason that utility regulation of private utilities exists is that the public cannot allow free direct competitive systems to exist without a substantial loss due to duplicate facilities; therefore, franchises are given to a single utility under a regulatory commission clothed with the power to confine utility charges to reasonable rates. As a matter of fact, there is only one uniform standard of measurement of utility rates that exists in every public service statute and that is rates shall be "just and reasonable."

The whole controversy, Spacek commented, is focused at the amount of fair return. He proposed a method by which to secure this return that responds to the *raison d'être* of regulation *i.e.*, to make sure that the utility enjoys no greater

freedom in its charges than would exist if competition existed. He established these premises:

> (1) A utility is merely a controlled partner in the everyday activities of the people in the community which it serves. It is controlled because duplicate facilities in the utility field to secure competition merely increase the over-all costs on everyone; (2) the risks of the utility business from a competitive point of view are exactly the composite of the business which it serves since it is these businesses that provide the livelihood for the people served. The risk of utilities may be less than any one of the industries served because of the diversification inherent in serving all businesses but this would be reflected in the earnings price ratio (rate of return) demanded by the public.
> . . . As a service organization, utility risks are controlled primarily by the risks of those served; (3) thus the utility being a partner in the area it serves with the businesses it serves, its investors should be allowed the same competitive value per dollar of prudent investment as all other businesses are receiving at the time the utility rate is determined, multiplied by the annual rate of return (earnings price ratio) at which the public appraises the utilities' composite risk.

Later in his address, Spacek commented:

> . . . No theory of regulation protects any business or any endeavor to long evade its share of the economic load of the community which it serves. That is our American system. . . . It has been well established that the commercial industry dollar of investment and labor share in the productive value of our economy. Then why is the utility investor's dollar omitted from this participation? If this is not done, it means that the value of each dollar invested in utilities is confined to a dollar regardless of its economic value and cannot rise with the economic condition of its business partners but may fall. Under this original cost doctrine, there are only two roads for the utility investors' dollar to travel—break even or lose. Mutuality of terms does not exist. If it is assumed that the utility is a partner of the government, it is possible, even though illogical, to rationalize the original cost doctrine up to the point where the utility fails to have the power to tax—and at that point the similarity with government ceases—and the utility investors stand the burden of a losing economy strictly as a business enterprise, the same as any other business, without having had the opportunity to benefit from favorable economic conditions.

Spacek presented an illustration of how the value of the dollar invested in other businesses had fared under present economic conditions in contrast to the dollar value invested in utilities. He prepared a statement that compared present market value of well-known businesses with the prudent investment dollar of those businesses (capitalization less intangibles). Spacek added:

> I have found that the "equalized prudent investment" rate base is understandable and regarded as fair to the average man, because, first, it is simple and reasonably determined, and, second, he believes it is fair that all business of the community should be on an equal footing.

SPACEK provided additional background to support his argument. He narrated that following the last war engineers used reproduction cost to adjust rates "to avoid strangulation of utilities by high construction costs." This method's imperfections made it undesirable because needed relationship of the method with that of other businesses did not exist. He thought this isolated utility regulation theories and resulted in concepts of fairness and unfairness that mean little to the public or other businesses. He believes that "equalized prudent investment" puts all enterprises on an equal footing. He is convinced it will not introduce the errors of reproduction cost, or impose the unfairness (as he sees it) of the original cost doctrine upon the utility investors only.

Speaking of regulation, as such, he said:

> . . . Few people realize that the monopoly in utilities and regulation came hand in hand and that utility service with regulation eliminates the detrimental aspects of monopoly. The question is—has regulation reduced prices of utilities' services far below the point at which competition would have drawn the line had it been possible for competition to exist? If so, my line of reasoning would indicate this as unfair to utility investors.

In concluding, Spacek suggested that regulatory representatives such as Chairman James Landis should be invited to explain their views so that the doctrines underlying regulation can be fully understood and taken to public meetings for further discussion.

—F. T.

The March of Events

In General

Says Nation Faces Lack of Power

CLAUDE R. WICKARD, Rural Electrification Administrator, on December 14th stated the nation faces a serious shortage of electric power and declared private power concerns are failing to do enough about it.

The shortage is particularly critical for rural areas, he said, because of their dependence upon overloaded urban generating units.

The administrator said that, unless something is done to increase power generating capacity of the country, farmers' ability to produce food for urgent domestic and foreign needs may be seriously hampered.

Wickard hit at what he described as the "traditional lack of foresight which power company leaders have displayed in their estimate of the potentialities of rural electrification."

The REA chief's statement on the power situation was based on a special investigation of electric supplies made by a committee of REA engineers and power specialists.

ABA Utility Council Meets

THE meeting of the council of the section on public utility law of the American Bar Association was held at the offices of its chairman, T. Justin Moore, at Richmond, Virginia, on December 6, 1947. The purpose of the meeting was to discuss the program of the utility section for the forthcoming annual convention of the American Bar Association to be held in Seattle next September. The council also launched a campaign for increased membership in the section by members of the bar in all states of the Union. The membership campaign is being conducted by a committee headed by E. Smythe Gambrell of Macon, Georgia. Frederick G. Hamley, of Washington, D. C., as chairman of the standing committee to report on the progress of public utility law, announced completion of his committee.

Alabama

Hearing Set on REA Loan Appeal

MONTGOMERY Circuit Judge Walter B. Jones, after granting a petition of certiorari sought by the Alabama Power Company, last month set a hearing January 8th on the utility's appeal of a recent REA loan approval order by State Finance Director Bill Drinkard.

The power company had asked that the finance director's order approving a $5,516,600 loan for Alabama Electric Coöperative, Inc., be set aside and an earlier one issued by a subordinate reinstated.

John P. Shaffer, chief of the finance department's division of local finance, had previously disapproved the application but Drinkard overruled the order.

The state demurred to issuance of the writ of certiorari by which the utility asked that records of the finance department hearing be brought before the court, but this was overruled.

The coöperative seeks the loan to finance a steam generating plant at Gantt, Alabama. The power company has opposed this, contending it already has facilities to supply electricity to this area.

Concludes Tax Payments

THE Alabama Power Company has concluded payments of state, county, and city ad valorem taxes for 1947 totaling $1,562,746, it was announced recently. Approximately 44 per cent of this amount, or $692,590, will be earmarked for school funds. Other state taxes paid by the company bring the total earmarked for schools to $1,237,722 for 1947.

The company's total taxes, Federal, state, county, and city, for 1947 will be approximately $7,000,000.

Florida

Electric Exchange Meeting Set For Boca Raton

THE directors of the Southeastern Electric Exchange have announced the place and time of the annual convention of the exchange which is to be at the Boca Raton club, Boca Raton, Florida, on April 8, 9, and 10, 1948. An interesting program, devoted to a discussion of timely subjects affecting the electric utility industry, is being arranged. Those in attendance will also enjoy the pleasant social surroundings of the Florida resort club, which will be exclusively available for the exchange meeting.

Massachusetts

State Board Given Precedence

THE state board of conciliation and arbitration is given precedence in handling public utility labor disputes under a written agreement between the state and Federal labor conciliation services.

The agreement, made public December 10th in Boston, is designed to eliminate friction and wasteful duplication, and to assure the coöperative handling of strikes and labor disputes in the state.

Described as one of the first of its kind in the country since the Taft-Hartley Act directed the new Federal service to work more closely with state conciliation services, the agreement was announced by Brigadier General Charles H. Cole, chairman of the state board of conciliation and arbitration, and Howard E. Durham, regional director of the Federal Mediation and Conciliation Service.

Durham said the agreement had been in effect several weeks and already was working smoothly, with many of the mistakes of the old system being avoided.

Missouri

Curbs on Gas Heat Again Upheld

THE state public service commission recently refused to rescind its order of last April 22nd, authorizing the Laclede Gas Light Company of St. Louis to reject new applications for space heating service and to curtail industrial gas service, because of a shortage of gas supply during the winter heating season.

The commission upheld the validity and necessity of the service limitation rule, because of restrictions on natural gas supply available to Laclede in overruling a complaint filed by the Automatic

Firing Corporation, University City.

A complaint by this company, which manufactures and sells gas heating equipment, attacked the service limitation as unlawful and discriminatory. The petition, asking the commission to set aside the limitation, was dismissed in the commission order entered on December 9th.

The Federal Power Commission has issued a certificate of convenience and necessity to the Mississippi River Fuel Corporation, for second enlargement of the pipe-line system from the Louisiana natural gas fields into St. Louis. The effect will be to establish two full lines, to carry enough gas to enable distribution of straight natural gas in St. Louis and St. Louis county.

Nebraska

Light Department Draws Fire

CHAIRMAN Harold Kramer of the Nebraska public power system board of managers last month accused the Lincoln municipal plant light and power management of acting "contrary" to the recently announced power conservation program.

Customers of Lincoln's commercial light department have not been asked nor are they being asked to conserve electricity, it was reported.

City Asked to Limit Gas Customers

THE Beatrice city council recently was asked to enact an ordinance designed to place restrictions on the sale of gas to new space heating customers.

Requests for permission to limit the sale to new customers have been asked in 31 towns, Baxter reported. Of these, 21 have passed ordinances, 8 have agreed to pass them, and only 2 have not committed themselves, he said.

New York

Democrats Back Fare Raise

MAYOR William O'Dwyer's entire fiscal program for solving New York city's pressing fiscal problems, including an 8-cent fare to cover subway operating costs, received the unqualified support of the Democratic state organization recently.

Paul E. Fitzpatrick, chairman of the Democratic state committee, pledged the party's support to the O'Dwyer proposals following a conference with the Democratic members of the state legislature.

"We feel that the mayor is best informed as to what is needed and necessary to run the city," said Mr. Fitzpatrick.

South Carolina

Attack on Public Power Charged

FAILURE of Commonwealth & Southern Corporation to sell its South Carolina Power Company of Charleston to Santee-Cooper "is a direct attack on public power generally," a state public service commission hearing was told recently.

The statement was by Chairman James H. Hammond of the $60,000,000 state-owned Santee-Cooper hydroelectric authority which unsuccessfully sought to buy South Carolina Power for $1,400,000 more than the $10,200,000 accepted from South Carolina Electric & Gas Company of Columbia. He also termed refusal of Santee-Cooper's offer an "at-

tack" on the United States power project now under construction at Clark Hill on the Savannah river above Augusta, Georgia.

The hearing was being held on whether approved sale of South Carolina Power to South Carolina Electric & Gas is in "the public interest."

Texas

Power Company Purchase Sought

THE board of directors of the Brownwood Chamber of Commerce has asked the city council to consider purchase of the properties of the Brownwood Public Service Company, one of two privately owned electric power companies serving Brownwood.

The council recently decided to employ a disinterested appraiser to evaluate the properties, which consist of a generating plant and distribution lines serving a part of Brownwood.

The Texas Power & Light Company also serves Brownwood.

Brownwood, in addition to having two electric power companies, has two natural gas companies, a municipally owned plant, and the Lone Star Gas Company.

Washington

Phone Company Reports Ordered

THE Pacific Telephone & Telegraph Company has been ordered to file monthly, quarterly, and yearly reports with the state department of public utilities, according to a recent statement of Andrew J. Zimmerman, department director.

Zimmerman said the order is "in line with the department's recent order requiring service improvements to accompany rate increases. The department now can determine the company's income and earnings and type and quality of service being given the public."

The company has been granted an overall 14 per cent rate increase.

Wisconsin

Transport Company Sale

SALE of the Transport Company to a private firm, if made, should not discourage plans for setting up a metropolitan transportation authority, Walter J. Mattison, Milwaukee city attorney, said recently.

"The city can petition the state public service commission to name a fair price for the utility at any time," Mattison said. "The Transport Company franchise provides for condemnation by the city in accordance with state laws."

Mattison's comment followed the disclosure early last month that negotiations were in progress for sale of the Transport Company to National City Lines, Inc., Chicago.

Mattison said he had been informed by the Federal Securities and Exchange Commission that there was no action presently before the commission to which the city could become a party. The city attorney had been directed by the common council to appeal to the commission to prevent the sale of the Transport Company apart from the Electric Company.

Progress of Regulation

Rate Increase Based on Higher Operating Costs Is Upheld

THE Virginia Supreme Court of Appeals has affirmed the order of the state commission (69 PUR NS 161) approving higher rates for the Chesapeake & Potomac Telephone Company. The new rates would produce a return of 5.66 per cent on average original cost of plant, plus working capital, less depreciation reserves.

In reply to contentions that the commission had not considered numerous factors usually examined in rate cases, the court pointed out that this was not the usual or typical utility rate case. Ordinarily in seeking a rate increase the utility undertakes to establish a higher valuation of its property or to show that it is entitled to a higher yield on the established base, or both. The court then said:

> The commission had no such case before it here. The company did not undertake to increase the value of its rate base or to seek a higher return thereon. Its application was predicated upon the original cost of its plant, less depreciation, plus a small amount of working capital, as its rate base, which the testimony showed, and the commission held, in view of the present prevailing high cost of construction, was "among the lowest, if not the lowest, elements to be taken into consideration in determining the fair value or rate base."
>
> Obviously, then, any reasonable figure for the present fair value of the company's plant and property will be higher than the original cost, less depreciation. Had the commission considered certain of the factors mentioned by the appellants the value of the rate base might have been increased. It would not have been decreased.

The commission had refused to postpone the hearing for thirty days. There was no claim or suggestion that those requesting postponement desired further time within which to collect or produce evidence. The sole stated reason for postponement was that more time was desired "to study the proposed rate increase."

The commission had pointed out that the published notice of the hearing disclosed that schedules of the proposed rates were open to inspection. No reason was assigned why these were not studied in advance of the hearing. Clearly, in this situation, said the court, the refusal to grant a continuance was within the judicial discretion of the commission.

A complaint that the commission had not complied with a statute relating to temporary rate schedules was rejected with the statement that there was no question of temporary rates involved. What the company sought and obtained was prompt relief, not temporary relief.

The order was also attacked on the ground that it had violated a statutory provision that no change in rates could lawfully be made except after thirty days' notice to the commission and to the public. The court said that while the law does provide for thirty days' notice, there is also a provision that the commission may in particular cases prescribe a less time in which changes may be made.

Discrimination had been alleged because the new rates involved a greater percentage increase in the Arlington area. It was contended that the commission should have required that plant

values, operating revenues, and operating expenses in that area be segregated to that locality and that a fair rate be fixed for this part of the state as a unit. The court declared that the commission had properly answered this contention when it said:

> This commission many years ago adopted, and has used, the integrated statewide basis of telephone rate making whereby the total intrastate operations form the unit for rate making and determination of over-all revenue requirements. It has always fixed the rates on a statewide basis, with the exchanges classified generally as to the number of stations connected to and served by the various exchanges. The overwhelming majority of other state commissions, with telephone regulatory powers, has also adopted the statewide basis.

Although rates had been increased more in that area than in some others, it was apparent that recently, under 1926 schedules of rates, telephone users there had enjoyed a preferential rate af the expense of users throughout the state. The population had increased greatly, and, said the court, "as the number of telephones in an area increases, the value of the service increases, and the rate should increase correspondingly." *Board of Supervisors of Arlington County v. Commonwealth ex rel. Chesapeake & Potomac Telephone Co. of Virginia.*

Stock Redemption under Holding Company Act Held Involuntary

A FEDERAL District Court approved an amended simplification plan of the New England Public Service Company which the Securities and Exchange Commission had found to be necessary, fair, and equitable, and in compliance with § 11(b) of the Holding Company Act. The plan provided for payment of $100 per share plus accrued dividends to the holders of prior lien stock.

It also provided for the issuance of certificates of contingent interest to these holders as evidence of their right to receive additional payment if such right should later be found to exist. Compensation was also provided for the delay in the payment of this latter amount.

The holding company had been ordered by the commission to recapitalize on a common stock basis or to liquidate. The company chose the second alternative. Objections were made that the company, in choosing one means of compliance over the other, was performing a voluntary act and therefore the stockholders were entitled to call premiums upon the retirement of stock. This contention was dismissed by the court, which said:

> These proceedings, however, are the result of the application of the provisions of the act itself. The action of NEPSCO is basically the result of compulsion. The election goes only to procedural aspects of the case. . . . Of course, fact situations differ, and it is true that this court has had no case called to its attention where compliance with an alternative order was in issue. But this court feels that to attach a consequence to this form of order directly opposed to that given an order not providing for company election would be to deprive the commission of an opportunity to bring about changes contemplated by the act with a minimum of interference with the internal workings of business. Not only, therefore, is the commission's understanding of NEPSCO's "election" in accord with the common sense view but it is a step in the direction of minimizing needless friction between government regulation and private business.

The court was satisfied that the commission paid more than lip service to the standards of the evaluation of rights surrendered in the simplification proceeding. The commission had made a reasonable attempt to fix the value of the prior lien stock on a going concern basis apart from the impact of § 11 of the act.

Furthermore, an examination of the commission findings and opinion convinced the court that all parties in interest were afforded every opportunity to be heard, that all evidence submitted was

given careful consideration, and that due weight was given to arguments and contentions of counsel participating in the numerous hearings.

Objection was made to the fact that the question of value incident to the prior lien stock over and above the stated minimum value plus accrued dividends was adjourned for future decision, payment of any possible amount being guaranteed by an escrow deposit. The court felt that the involved problems in the liquidation made the disposition of issues in instalments not only fair and equitable but eminently sensible.

The holding company had previously disposed of some properties to obtain money to finance stock retirement pursuant to this liquidation. Proceeds of the sale of some assets in this connection constituted a capital gain and, therefore, would be subject to a capital gains tax of over $3,000,000 unless the proceeds of the sale were applied within two years to retirement of the company's stock. Final disposition of the question of value could not probably occur until well after the 2-year period. Therefore, it was set apart for future determination.

The court, in rebutting this objection, said that to press for an immediate determination of the issue as to whether there is a fair investment value in the stock rights over what the commission had found to be the indisputable minimum was to wish to "have one's cake and eat it too." *Re New England Pub. Service Co. 73 F Supp 452.*

Limitation on "Grandfather" Operation Upheld

A MOTOR carrier's complaint against an Interstate Commerce Commission order refusing to authorize the substitution of busses for sedans over a route operated by virtue of grandfather rights was dismissed by the United States District Court for the Southern District of New York.

The court ruled that a carrier operating under the grandfather clause may conduct only that type service which had been rendered prior to the critical date. The contention of the carrier that the commission action was discriminatory because it had many times before granted such extended authority was overruled on the ground that such error did not provide a basis for perpetuation or making general a violation of the Interstate Commerce Act. *Campus Travel, Inc. v. United States et al. 72 F Supp 711.*

Private Carrier Certificate Awarded over Common Carriers' Objection

A TRUCKING company's request for authority to operate as a private carrier in the transportation of government freight was approved by the Colorado commission over the objection of competing motor carriers. The commission conceded that state law required the denial of a private carrier permit where the operation would impair the efficient public service of common carriers already serving the area but called attention to testimony in the record which made the "impairment" statutes inapplicable.

The commission answered the argument of the principal objector, that the competition was unlawful and would impair his service, with this statement:

> The witness, Foster, stated he had been losing money for the past six months on his operation, and that a portion of his equipment is standing idle, and he would like to have had the opportunity to bid on this hauling.
>
> We have carefully analyzed his evi-

dence, and we cannot see from the record before us where Foster's common carrier service would be impaired. Further, he submitted no cost studies indicating that the above contract would be a profitable venture, nor is there any evidence that he would have made a comparable bid.

From the evidence before us, we could as well draw the conclusion that the operation would have been unprofitable, and a further drain on his operation, as the evidence clearly indicated that the bid was far under protestant Foster's published rate.

Re Clifton (Application No. 8658-PP, Decision No. 29139).

Air Transport Corporation Is Common Carrier

AN air carrier's request for an injunction against a competitor's operating without a certificate of convenience and necessity was granted by the United States District Court for Alaska.

The competitor's defense was that it was not a common carrier and therefore did not need a certificate. The court overruled this defense and stated:

> Here the defendant has held itself out to the public generally, first by advertising and other forms of publicity and later by its course of conduct, that it would, within the limitations of its facilities, carry for hire freight and all persons applying to it, and thus invited the patronage of the public. The ensuing response of the public and its accommodation by the defendant served to impress upon it the character of a common carrier. These factors, rather than the descriptive label placed by defendant upon its operations, are determinative of its status.

Alaska Air Transport, Inc. et al. v. Alaska Airplane Charter Co. 72 F Supp 609.

Earnings Required for Company with No Debt Securities

A RETURN of 5.6 per cent on average net plant investment was approved by the New Jersey board in authorizing higher rates for the New Jersey Bell Telephone Company. This company has no debt securities outstanding and all of its equity capital securities are held by the American Telephone and Telegraph Company.

There is no trading in its securities and no available direct market appraisal of its cost of capital. The board commented as follows:

> Under the present tax laws the 100 per cent equity capital structure results in higher Federal income taxes than would be the case if there was some debt capital. In the situation so confronting us, the board is not bound by the existing capital structure. On the contrary, it must consider what the cost of capital would be if the capital structure of the company conformed to a pattern which would result in more reasonable overall costs and yet be financially sound.

The company submitted evidence as to return requirements related to the return requirements for the Bell system as a whole. The board notes that there are practical, if not legal, limitations on its ability to undertake effective investigation of system earning requirements. Moreover, it does not consider that this necessarily provides a proper measure of the earnings requirement.

Past earnings, in the opinion of the board, do not provide an exact measure of present earnings requirements. The picture, said the board, was further distorted by undue weight accorded to the period 1920-1926 when relatively high earnings were experienced.

Those opposing the rate increase presented evidence as to cost of capital based on assumed capital structures. Earnings price ratios were used as a measure of the equity capitalization rate required by investors. The company contended that little reliance should be placed on earnings price ratios because there are many factors other than current earnings which influence the market price of a stock.

The board does not think that studies of cost of equity capital, such as those introduced, necessarily fix precisely the

level of cost of equity capital. Nevertheless, such objective studies are relevant and material and should be considered.

The year 1946, in the opinion of the board, is not a satisfactory yardstick for testing existing rates, since revenues, expenses, and investment would in 1947 vary materially from levels for those items in the past year. Estimates of operating results for the year 1947, exclusive of the effect of restricted business activity caused by a strike, afford the most acceptable basis.

A "current cost estimate" is not acceptable to the board as a measure of the rate base. Present book costs reflect cost of piecemeal construction. When adjusted to reflect current costs, there may be a wide difference from wholesale reproduction cost.

The board, in considering payments to the parent company under its license contract, holds that the contract, having never been approved by the board as required by state law, is not binding on the commission. Under the provisions of the statute no contract for services which comes within its purview may be approved if the price fixed exceeds "fair compensation."

The board recognizes that valuable services are rendered by the parent company and a fair allowance should be included in operating expenses. It makes an allowance independent of the 1½ per cent provided in the contract.

A claim for expense of relief and pensions is adjusted for a so-called "freezing charge" required to prevent further growth of an unfunded actuarial liability resulting from the lack of normal contributions to the pension fund for service periods prior to 1928.

Donations to such organizations as the Red Cross, Community Chest, and Boy Scouts are held not to be chargeable to customers. *Re New Jersey Bell Teleph. Co. (Docket Nos. 2903, 3236).*

Agency Station Not Required

THE supreme court of Illinois affirmed a circuit court order setting aside a commission decision refusing to permit a railroad to discontinue an agency station.

The supreme court pointed out that the statutory requirement that the railroad maintain a depot in every town on its line with a population of 200 or more people did not specify that an agency station be maintained.

The court specifically rejected a ruling on the bearing of financial condition of the railroad on its right to abandon an agency station in these words:

> We think the decision of the commerce commission that the cost of operation of the single station cannot be considered unless its effect is to cause a loss to the whole system, is not comportable with the intention of the Public Utilities Act, nor with our recent decisions.

Illinois Central R. Co. et al. v. Illinois Commerce Commission, 74 NE2d 526.

Company Developing and Operating Power Sites Is Not a Public Utility

THE Wisconsin commission has ruled that Wisconsin River Power Company is not a public utility under state laws. This company was organized to construct and operate dams and hydroelectric plants and to produce and sell electric power.

It was organized under a contract between Consolidated Water Power & Paper Company, Wisconsin Power & Light Company, and Wisconsin Public Service Corporation. It will develop sites and sell electricity to these three companies. It does not intend to sell or distribute electricity to any others or to hold itself out to serve the public.

This sale of electricity under a contract, said the commission, is merely the disposition of the merchantable product of the plant. The company's position is said to be identical with that of Union Falls Power Company, which was involved in a case before the state supreme court. There the court had said:

> If a customer should present itself demanding service, it has no schedule of rates which would be applicable to such a situation. The fact that the plaintiff company furnished electrical energy to the city of Oconto Falls, which in its proprietary capacity, acting as a public utility, in turn distributes it to the public, does not make the plaintiff company a public utility.

Re Wisconsin River Power Co. (DR-11).

Regulation Limiting Use of PBX Held Reasonable

THE Ohio commission, in dismissing the complaint of a building owner against a telephone company regulation limiting the operation of a private branch exchange (PBX), ruled that the regulation was valid and reasonable. The regulation provided that a building PBX might serve no more than four joint users. The commission quoted with approval a New York commission decision in a similar case:

> The outstanding reasons to my mind, against the complainant's contentions here, are found in a consideration of the situation which would exist if applications such as his were granted:
>
> (1) It would establish a third party between the telephone company and the users of its service.
>
> (2) The middleman would use only such equipment as he considered necessary.
>
> (3) All of the company's dealings with the real users of its service would have to be through the medium of this third party over which the company would have no control, since presumably the middleman would not be considered a utility.
>
> (4) Many difficulties would be thrown in the way of providing efficient service, not only from the standpoint of the telephone utility but also in the way of regulation, and service complaints would undoubtedly multiply with very little chance of reasonable or timely correction and adjustment.
>
> (5) Further, if the practice were acknowledged and followed, there seems to be no limit to such utility service, because it could not be restricted to one building or a group of buildings or even to an entire city block.

Building Industries Exhibit, Inc. v. Cincinnati & Suburban Bell Teleph. Co. (No. 13118).

State Power District Not Exempted from Charges under Power Act

THE ruling of the Federal Power Commission that the Central Nebraska Public Power and Irrigation District must pay annual charges under the Federal Power Act (64 PUR NS 263) has been upheld by the courts. The United States Circuit Court of Appeals affirmed the commission's action, and the United States Supreme Court has refused to review the decision.

The district, as pointed out by the court, had applied for a license after annual charges, duly reported to Congress, had been uniformly effective for many years. It had obligated itself to pay the charges and had received vast grants and loans as a result.

The court declared that the district could not assail the validity of that part of the Federal Power Act under which the rate of charges was originally established while it was asking the commission to apply the exemption clauses of the same law.

Exemption from payment of annual charges, the court continued, does not depend upon the character of the licensee but upon the extent to which power is sold without profit.

Whether a licensee which is a public

corporation engaged in selling power to the public at a profit should or should not be exempt from annual charges was said to be a matter of legislative policy and not for the courts to decide. *Central Nebraska Public Power & Irrigation Dist. v. Federal Power Commission, 160 F2d 782.*

Other Important Rulings

THE Indiana Supreme Court ruled that where a transit company had started a proceeding in the circuit court to overturn a commission rate order, that court had full jurisdiction and the superior court could not interfere by accepting a case against the company to prevent it from collecting fares different from those fixed in the rate order. *State ex rel. Indianapolis Railways, Inc. v. Superior Court of Marion County et al. 74 NE2d 912.*

The North Carolina Supreme Court, in dismissing the appeal of a motor carrier from a commission decision awarding a certificate to a competitor, ruled that an applicant for a motor carrier certificate who has no prior right to serve an area is not entitled to appeal from a commission decision denying his application and awarding the franchise to a competitor. *North Carolina Utilities Commission v. McLean, 44 SE2d 210.*

The California commission, in awarding a certificate of convenience and necessity for a common carrier vessel service for passengers, automobiles, and trucks, ruled that no direct commitments for the service need be shown providing general public need is demonstrated. *Re Alexander (Decision No. 40304, Application No. 27797).*

Titles and Index

Preprints in This Issue of Cases to Appear in
PUBLIC UTILITIES REPORTS

TITLES

INDEX

PUBLIC UTILITIES REPORTS

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Re Northwestern Bell Telephone Company et al.

F-2166, F-2172, F-2174
September 15, 1947

APPLICATION *for authority to adjust rates for intrastate telephone exchange service wherein complaints against reasonableness of intrastate toll rates were entertained; rate increase authorized, complaints dismissed. For earlier decision, see (1946) 66 PUR NS 140.*

Rates, § 76 — Jurisdiction of Commission — Conformity of interstate and intrastate telephone rates.

1. Whether the Commission may properly adjust intrastate telephone rates so as to bring them into conformity with interstate rates, where the short intrastate call happens to pass over a line also used for interstate messages, is a matter within the sound discretion of the Commission, p. 6.

Rates, § 135 — Reasonableness of telephone rates — Comparison.

2. A comparison of intrastate telephone rates with intrastate rates in other states, as well as with interstate rates, is proper in determining the reasonableness of the rates, but the weight to be given such evidence is dependent upon similarity of conditions with respect to cost of service and other factors, including a reasonable return upon plant investment in the unit or area established for rate-making purposes and over which the Commission has jurisdiction, p. 6.

Rates, § 134 — Reasonableness of telephone rates — Discrepancy between intrastate and interstate rates.

3. The difference in the cost of interstate and intrastate telephone messages is a minor cost factor of competing business concerns, although one not to

be ignored by the Commission in determining the reasonableness of intrastate rates, p. 8.

Rates, § 135 — Reasonableness — Comparison.

4. One of the rules to be followed in using comparative rate studies in determining the reasonableness of rates is that "like must be compared with like," p. 9.

Rates, § 134 — Reasonableness — Comparison — Guiding principles.

5. A telephone company's operating conditions, character of usage, value of service, investment as compared with volume of business available, local cost factors, and over-all revenue requirements must be considered where rate comparisons are used as a basis for determining the reasonableness of rates, p. 9.

Rates, § 184 — Reasonableness — Burden of proof.

6. A party alleging that rates are unreasonable and discriminatory has the burden to support such allegations by competent evidence, p. 9.

Rates, § 583 — Reasonableness — Basis for determination.

7. In pricing telephone toll service for the purpose of fixing rates, a direct air-line mileage between points not over forty miles apart was used, and above that distance a block and section system was used for determining distance which at times varies slightly from direct air-mile mileage, p. 11.

Telephones, § 1 — Commission policy.

8. Not only the policy of the law but that of Commissions is to make telephone service available to as many people as possible, p. 11.

Service, § 433 — Telephone regulation — Commission policy.

9. It has been the general policy of the Commission to encourage the extension of exchange telephone service into every community and household of the state, p. 11.

Rates, § 536 — Reasonableness — Value of telephone toll service.

10. The value of toll service is an appropriate factor for consideration in fixing telephone toll rates, p. 11.

Rates, § 135 — Reasonableness — Comparison.

11. A mere comparison of rates unsupported by any evidence of similarity of operating conditions and costs has little probative value, p. 12.

Return, § 113 — Telephone company — Confiscation.

12. Telephone rates resulting in net earnings of only 1.96 per cent on book cost and working capital and 3.05 per cent on the depreciated value of the company's investment in operating plant are confiscatory, p. 12.

Rates, § 582 — Telephone — Factors considered.

13. Operating conditions, density of traffic, investment in plant per toll message, revenue per message, geographical position and development with respect to use of toll lines, off-setting factors such as local advantage of businessmen in competing for business outside of the state, over-all revenue requirements, etc., all must be weighed and considered in determining the reasonableness of intrastate toll rates, p. 14.

APPEARANCES: Respondent Northwestern Bell Telephone Company, by its attorneys H. A. Poley, of Omaha, H. G. Burke, of Omaha, and Fred

Warren, of Sioux Falls; Roy D. Burns, Attorney, for the city of Sioux Falls; S. W. W. Carr, Traffic Manager, Traffic Bureau, Sioux Falls; R. B. Willard, Secretary and Traffic Manager of the Mitchell Chamber of Commerce, in Docket F-2174; R. F. Williamson of Williamson & Williamson, Aberdeen, representing independent telephone operators of the state; William Williamson, Assistant Attorney General, appearing in the public interest.

By the COMMISSION: On December 12, 1946, the Northwestern Bell Telephone Company filed its application for authority to adjust its rates and charges for telephone exchange services furnished by it within the state of South Dakota. Prior to the filing of this application the Commission had been informally advised by the applicant that its net earnings had diminished until it was threatened by a substantial deficit for the year 1946, and that if the company were to remain solvent and continue to render the services that the people of this state expected and were entitled to that an increase in telephone rates and charges was imperative.

Prior to the filing of said application and after a conference with W. R. Johnson, vice president and general manager, and H. L. Frentress, general commercial manager of the Northwestern Bell Telephone Company, hereinafter referred to as Company, at the offices of the Commission, the Commission directed its engineer and accountant to make an exhaustive study of the Company's financial status. As this study progressed and the investigation by the Commission proceeded it became increasingly apparent that a considerable increase in the then current rates and charges would have to be authorized if the Company were to be taken out of the red and be allowed to earn a fair return on its investment in telephone plant used in rendering exchange and toll service within this state. Courts generally throughout the country, including our own supreme court, have held that a rate of return upon capital invested in telephone plant used in rendering public telephone service of less than 6 per cent is confiscatory. To realize such a return upon the value of the Company's plant in South Dakota, the Company asked for an advance in rates and charges sufficient to enable it to increase its revenue within the state approximately $1,000,000 annually. To accomplish this, a drastic revision of the rates upward would have become necessary.

The Commission, therefore, undertook negotiations with Company officials with a view to getting them to accept an increase in rates and charges which was estimated to yield approximately one-half of what was originally requested by them. A statewide basis for fixing rates and consolidating exchange and toll for revenue and rate of return purposes was tentatively agreed upon.

The Commission then requested the Company to file a formal application for an increase in rates in general conformity with the tentative understanding arrived at and submit data and information in the form of exhibits in support of said application. It was upon these exhibits and those prepared by its staff, which included the report of its engineer and statistician based

upon a first hand study of the books, records, and files of the Company in its own offices, that the Commission based its report and order of December 27, 1946, 66 PUR NS 140, increasing rates and charges effective on the several billing dates thirty days next following the date of the order. It was estimated by the Commission that the increases granted in its order of December 27, 1946, at the then prevailing cost of materials, supplies, and wages, would result in increasing the gross revenues of the Company approximately $506,000 on an annual basis.

Some complaint having been made by a few newspapers of the state because the Commission had not given as much publicity to the application of the Company for an increase in exchange telephone rates as they thought should have been given, the Commission on its own motion reopened the case and set it down for public hearing on April 8, 1947. Thereafter, on application of the city of Sioux Falls dated March 28th, the hearing was postponed to May 20, 1947. Due to a strike the office and official personnel of the Company were compelled to operate switchboards and perform other manual labor thereby making it impossible for the Company to make the necessary preparation for the hearing fixed for May 20th. The hearing, thereupon, was further postponed to and heard at Pierre, on June 4, 5, 6, and 7, 1947.

In the interim, the Mitchell Chamber of Commerce and the traffic bureau of Sioux Falls filed separate complaints alleging, among other things, that the Northwestern Bell Telephone Company publishes, demands, and collects rates and charges for the transportation of intrastate toll messages which were, are, and will be, for the future unjust and unreasonable and in violations of the laws of this state. The Commission prior to the filing of these complaints having established a statewide system of fixing telephone rates and having consolidated exchange and toll revenues for the purpose of determining the total revenues of said Company and the rate of return upon telephone plant investment, it was agreed by all parties in interest that these complaints should be heard in connection with the hearing on the application of the Company and notices of hearing were issued accordingly.

The notice of hearing in the above-entitled proceedings was served on the mayor or town clerk of each town at which there was a telephone exchange of the Company and handed to the Press representatives which sent out a dispatch covering the matter, which dispatch was carried quite generally by the daily newspapers in the state.

Operating results for 1946

At the time the Commission made its report the increased wage scale that the Company was compelled to grant in the early part of 1946 was not fully reflected in its expense account until the second quarter of 1946 and its operating expenses were not available for the fourth quarter. The operating results for the year 1946 were, therefore, arrived at by using the data available for the second and third quarter as representative for the year and projecting these back to cover the first quarter and forward to cover the last quarter. Based upon the data at

hand a deficit for 1946 of $58,546 was indicated, or percentage-wise of .44 per cent on value of plant and working capital.

The actual result as shown by Respondent's Exhibit 14 submitted at the hearing was a deficit of $61,096 for the last nine months of 1946. This stated on an annual basis would show a net loss for the year of $81,461.

Respondent's Exhibit 15, p. 2B, shows that the new rates granted by the Commission, based upon the business of the Company for the second and third quarter of 1946, stated on an annual basis, would result in an increased revenue of $506,000 annually. At the time the Commission made its report on December 27, 1946, *supra*, the operating result was not available for the fourth quarter. Exhibit 15, p. 2A, shows that for the last nine months of 1946, stated on an annual basis, such new rates, had they been in force, would have resulted in an increased revenue of $512,612. However, the actual net revenues after taxes and other minor adjustments would only have amounted to $355,-054. As of December 31, 1946, the book cost of the Company plant and equipment used in rendering intrastate service in South Dakota and working capital amounted to $13,983,456 (Exhibit 13, p. 1A). The increased revenues had there not been an actual deficit of $81,461 would have yielded an annual return of 2.54 per cent on investment, plus working capital. When the deficit is deducted from such increased revenues the actual net is only $273,593 or 1.96 per cent on the book costs and working capital. Deducting the depreciation reserve (Exhibit 16), which on December 31, 1946, amounted to $5,012,260, from the book costs plus working capital we find the value of the Company's plant used in rendering telephone service in South Dakota plus working capital at the close of the year 1946 was $8,971,196. It is apparent, therefore, that had the new rates granted by the Commission in December, 1946, been in force during that year, the Company would have realized only 3.05 per cent upon its investment in South Dakota for 1946. As already stated, at the time it prepared its report, the Commission did not have before it the operating results for the last quarter of 1946. Upon the data then available the Commission estimated that if the new rates had been in force during 1946 that the Company would have earned 3.21 per cent upon its working capital and the book costs of its plant less the depreciation reserve.

On March 28, 1947, the city of Sioux Falls intervened and its city attorney, Roy D. Burns, made due appearance on its behalf and participated in the proceeding throughout the hearing. The city of Sioux Falls had employed two expert auditors who spent a number of weeks in examining records, files, and reports deposited with this Commission by the Company and made an exhaustive study of the records and files of the Company at its home offices at Omaha. These auditors were present during the time that the respondent Company submitted its oral testimony and exhibits, but left before the conclusion of the case without being sworn as witnesses. The attorney for the city of Sioux Falls, however, on being asked by the Commission whether he had any testimony

to submit, stated that the city of Sioux Falls had employed two auditors who had examined the books and records of the Northwestern Bell Telephone Company and who had made a report, but that since such report corresponded substantially with the evidence already submitted by the Company at the hearing no material purpose would be served by placing such auditors on the stand as witnesses.

The examination of the records and files of the Company lodged with the Commission and of its books and records at Omaha, by the Commission's staff of experts and the auditors retained by the city of Sioux Falls confirmed the accuracy of the Company's exhibits. It is apparent, therefore, that the record made at the hearing not only sustains the report and order of the Commission of December 27, 1947, *supra*, but demonstrates that the earnings of the Company are far below what has been found by courts and Commissions to be a fair return upon capital investment in telephone plant. As has already been noted, the Company accepted the rates fixed by the Commission without prejudice to its filing of an application for a further increase should the results of future operations show that such rates are inadequate to produce a fair return upon its investment.

Wide publicity was given to the report and order of the Commission between the time it was made public on December 27, 1946, *supra*, and the time of the hearing which was held on June 4 to 7, 1947. Notwithstanding this, virtually no complaints with respect to the Commission's findings and order based thereon were received by the Commission from subscribers to the Company's service. It is significant, also, that no one appeared at the hearing to voice any objections either to procedure followed by the Commission in arriving at its findings of fact and conclusions thereon as set forth in its report and order of December 27th, or to the rates and charges therein authorized.

Such report and order is fully sustained by this record and will be allowed to stand without change.

Complaints with Respect to Toll Rates

[1, 2] We come now to complaints filed by the Mitchell Chamber of Commerce and the traffic bureau of Sioux Falls. The allegations of these complaints are identical and in substance allege that the Northwestern Bell Telephone Company publishes, demands, and collects rates and charges for the transportation or transmission of messages by telephone within the state of South Dakota which were, are, and will be for the future unjust and unreasonable in violation of SDC 52.-0208; that such rates unjustly prejudice and discriminate against complainants' members in violation of SDC 52.0209 and 52.0230; that such rates and charges exceed those of corresponding rates for similar distances within contiguous states and also between South Dakota and contiguous states and are prima facie unreasonable and in violation of SDC 52.0218; and that such Company charges and receives greater compensation for the transportation of messages for shorter distances within South Dakota than for a longer distance over its telephone line, all or a portion of the shorter haul being included within the longer, in violation of SDC 52.0210.

These allegations are sweeping and catalogue practically every violation possible under our statute.

In order to arrive at a conclusion as to the validity of the complaints with respect to intrastate toll rates, we must have a clear and concrete understanding of the facts and situations that gave rise to the complaints.

It is undisputed that the intrastate toll rates in at least 44 out of the 48 states of the Union are higher than the prevailing interstate rates and that South Dakota is not an exception to this prevailing pattern.

The case on behalf of the traffic bureau of Sioux Falls was presented by its traffic manager who submitted elaborate exhibits, identified for the record as numbers 40, 41, 42, and 43, to show the disparity that exists between intrastate and interstate toll rates. He took the position in his oral testimony that the toll rates should be no higher in this state than the interstate rates prevailing generally throughout the country. In that connection he pointed out examples of alleged prejudicial and discriminatory rates that worked to the disadvantage of Sioux Falls dealers and businessmen who were in competition with men engaged in like business at such points as Sioux City, Iowa, and the Twin Cities of Minnesota, and which he insisted were in direct violation of the sections of the South Dakota Code of 1939 enumerated in the 4th preceding paragraph. It is not possible within the compass of this report to review these exhibits, but an illustration or two will make clear the situations he has in mind. On page 14 of his Exhibit 41 is a comparison of the telephone rate from Sioux Falls and from Sioux City to 17 South Dakota points. This shows a rate for a 3-minute person-to-person call from Sioux Falls to Aberdeen of $1.25 for a distance of 162 miles, and from Sioux City to Aberdeen the rate for a like call is $1.15 for a distance of 235 miles. A like comparison with Chamberlain shows a rate from Sioux Falls of $1.20 for 142 miles, and from Sioux City a rate of $1.05 for 183 miles. However, it is clear from his own testimony and that of others that Sioux City suffers a similar disadvantage as against Sioux Falls when calling points in Northwestern Iowa and Southwestern Minnesota in which territory Sioux Falls and Sioux City are also keen competitors. Sioux City has a slight advantage in that Iowa intrastate toll rates for like distances are generally 5 cents lower than the South Dakota rates.

On page 15 of Exhibit 41 the witness has set out what he terms typical examples of violations of the short-and long-haul provisions of § 52.0210. The comparison there is between South Dakota points and South Dakota points and points outside of this state, in other words, a comparison between intrastate short-haul rates and interstate long-haul rates. This Commission has no jurisdiction of interstate rates and we doubt that the legislature intended that this section should cover such a situation as no state law can extend beyond the borders of the state. If the Commission were to adjust intrastate rates in all cases so as to bring them into conformity with the interstate rates where the short intrastate call happened to pass over a line also used for interstate messages it would result in a confusion of rates and no end of

discrimination as between South Dakota people on intrastate messages, as it is manifest that not all South Dakota calls occur on lines which are a part of long-distance interstate lines. At any rate, whether this is permissible or not is a matter within the sound discretion of the Commission under the section in question.

The primary contention of this witness both in his oral testimony and as indicated by his exhibits is based upon the premise that all that is necessary to prove to make out a prima facie case in support of his sweeping allegations is to show that interstate rates are upon a lower level than intrastate rates. If that position is correct, the regulatory powers of this Commission so far as rates are concerned would end as the rates fixel by the Federal Communications Commission would control. True, a comparison of intrastate rates with the intrastate rates of other states is proper, and so is a comparison with interstate rates, but the weight to be given such evidence is dependent upon similarity of conditions with respect to cost of service and other factors, including a reasonable return upon plant investment in the unit or area established for ratemaking purposes and over which the sitting regulatory body has jurisdiction—in this case, the state of South Dakota.

[3] The secretary-traffic manager of the Mitchell Chamber of Commerce stated that the use of the long-distance telephone is becoming more and more an essential part of doing business and that the chamber is not only interested in the amount of the telephone bills of its members but that such members were even more concerned with the relationship of the rates which they pay for services within the borders of this state as contrasted with that paid by their competitors in adjoining states when calls are made to the cities within South Dakota for whose business they are competing. His contention is that businessmen in adjoining states have a distinct advantage over businessmen in this state due to the fact that they enjoy a lower rate from their point of business to South Dakota cities than is enjoyed by businessmen of this state. In support of this testimony he submitted Exhibit 44 in which he contrasts intrastate rates within South Dakota with the rates prevailing in adjoining states in which the defendant Company is doing business. Page 1 of this exhibit contrasts the intrastate station-to-station rates of Iowa, Nebraska, Minnesota, and North Dakota with those of South Dakota. It will be observed that for any given mileage the rate in the adjoining states named is 5 cents lower. This difference in rates would not appear to be sufficient to appreciably affect business relationships as between businessmen in the two states. The witness explained that the word "Other" at the top of each column of Exhibit 44 meant states other than South Dakota in which the Northwestern Bell Telephone Company is rendering long-distance service. Pages 4 and 5 of this exhibit contain comparisons of intrastate rates from Mitchell to 31 South Dakota points with interstate rates from Sioux Ciy, Fargo, Twin Cities, Omaha, and Denver.

In all cases the intrastate rates are higher per mile and generally irrespective of the number of miles the message is carried. To the extent that toll lines

are used by businessmen in adjoining states to obtain business in South Dakota cities in which Mitchell businessmen seek patronage, the out-state businessman has an advantage, but as noted in the case of Sioux Falls the South Dakota businessman has the same advantage in doing business in an adjoining state as against a competing businessman in such state.

No attempt was made by any party to the record to show the extent of the use of the telephone by businessmen in or out of the state in competing for business in a foreign state. It is certain, however, that the differences in the cost of telephone messages of this type is a minor cost factor of competing business concerns, though certainly one not to be ignored by any regulatory body.

There was some suggestion made by the complainants that the allocations of revenue from interstate calls to the local exchanges were inadequate, but no testimony was submitted in support of inadequacy, if any exists. The secretary of the South Dakota Independent Telephone Association, who is also the owner and operator of the Delmont, South Dakota, Telephone Company, but who operates no toll lines, testified that he thought the division of revenue paid to the independent companies for handling long-distance calls was fair and adequate. His Exhibit 36 shows the method used to compute the division. He also stated that during the year he had served as secretary of the association he had not had any complaints with reference to the present toll rates in this state.

[4–6] We have already adverted to the rule of evidence with respect to the weight to be given to comparative rate studies. These studies are always a factor, and frequently the main factor, in determining the reasonableness of rates and whether or not they are preferential or discriminatory, but Commissions and courts through the years have gradually evolved what has now become well-established rules of evidence that must be observed if correct conclusions are to be arrived at. One of these rules that must never be lost sight of is that "like must be compared with like." Another equally well-established rule is that where rate comparisons are used as a basis for determining the reasonableness of rates and whether they result in unreasonable discriminations, etc., the operating conditions, character of usage, value of service, investment as compared with volume of business available, local cost factors and overall revenue requirements, must be considered, and the burden is upon him who asserts unreasonableness and discrimination, to support such allegations by competent evidence.

The only person who dealt with the operating conditions and cost factors and made comparisons between this and adjoining states was the general commercial manager of the respondent Company. Among the differences of operating conditions which the witness said justified higher toll telephone rates in South Dakota as compared with surrounding states in which said telephone company furnished toll service, were the following:

"For one thing we must consider the economic characteristics of a state including population density. This affects the usage of the various services as well as the cost of rendering a statewide telephone service. South

Dakota is predominantly an agricultural state and does not have large centers of population. The population is widely scattered in a majority of the area of the state. The total population per square mile of territory in South Dakota, according to the 1940 Federal Census, was 8.4 as compared to an average of 25.8 in the other four states of this Company's territory, and 44.2 as compared with the United States as a whole. . . . 43 per cent of the main telephones served by this Company in South Dakota are in exchanges of less than 1,000 main telephones, while in the rest of this Company's territory only 14 per cent are in exchanges of this size. Seventeen per cent of the main telephones of this Company in South Dakota are in exchanges of more than 10,000 main telephones compared with 53 per cent in the other four states in which this Company operate. North Dakota has a similar figure of 21 per cent On the average, 705 telephones per exchange are served by this Company in South Dakota compared with 2,377 telephones in the other states. Toll plant required to provide long-distance service in South Dakota is greater in relation to the volume of long-distance business than in the other states of this Company. To illustrate that, in 1946 there were 602 of gross originating tolls per mile of toll pole line in South Dakota compared with 1,724 per mile in the other states. Fifteen per cent of the telephones owned by this Company in South Dakota are located in rural areas compared to only 5.5 per cent in the other states. This becomes a significant factor because of the comparatively high cost of furnishing rural telephone service due to the greater distances involved, greater investment in outside plant, and higher maintenance cost in plant of this nature."

Questioned with respect to conditions in North Dakota, the witness said, "While the volume of toll business originating in the two states is almost identical, there are 3,859 miles of toll pole line used to furnish service in the state of North Dakota compared with 4,240 miles in the state of South Dakota. The miles of long-distance circuits required to handle message toll business in South Dakota are 43,892 compared to 36,186 in North Dakota." And the witness added "Despite comparisons of this nature, the problem we are dealing with in this proceeding is the charges for service in South Dakota as related to the over-all revenue requirements of the Company in this state." The record shows that the result of reducing South Dakota intrastate toll rates to the level of interstate rates would reduce revenues approximately $365,000 annually and be equivalent to reducing the charges for main telephones approximately $5 a year per telephone. Such a reduction in toll rates would have the effect of practically wiping out the prospective revenue from the increased rates granted by the Commission in its December, 1946, decision. It is perfectly obvious, therefore, upon the record that any adjustment downwards of toll charges in this state would make it necessary to increase exchange rates sufficiently to make good the loss in revenue by such reduction. The Commission does not believe that the reduction proposed by the complainants would be in the interest of the public generally throughout the state, but

that on the contrary, it would result in many people now having telephones being compelled to ask that they be removed thereby still further reducing revenues. The Commission is of the view that under existing operating conditions in South Dakota, a reduction in intrastate toll telephone rates is not justified, and it so finds.

Discussion of Evidence

[7–10] In pricing telephone toll service for the purpose of fixing rates, a direct air-line mileage between points not over 40 miles apart is used. Above that distance a block and section system is used for determining distance which at times varies slightly from direct air-line mileage. The cost of transmission, however, is necessarily governed by the route over which the message actually passes.

Not all Commissions follow the same policy in fixing reasonable rates nor exactly the same standards. As all major telephone companies have for many years followed the uniform system of accounting prescribed by public authority, it is not a difficult matter to determine the over-all revenue needs of such companies, but the methods of supplying such needs differ in the various states of the Union. The present toll and rate schedules in the several states of the Union reflect in varying degrees the impact of local service conditions, toll business characteristics, cost of service, and rate-making policies of state Commissions. Message toll rates designed to fit service conditions existing in a specified state and to produce a given amount of revenue will not be appropriate nor produce the same revenue results in another state or area where service and operating factors are different. A witness for the respondent stated that ". . . message toll service is priced in relation to the character of usage, cost of furnishing service, value of the service, development of local and toll service, and the over-all revenue requirements from all intrastate services in a given state." From the Company's standpoint this basis for determining rates would appear fairly adequate, but other matters and factors enter into Commission prescribed rates. Such factors are often local in character and have to do with policies relating to public welfare. Public welfare and the all-over good of a community are not always forwarded by a scientific approach to the fixation of rates. Not only the policy of the law but that of Commissions is to make telephone service available to as many people as possible. The household telephone is primarily an instrumentality of social intercourse and a convenience while that of a business establishment is an instrumentality of financial gain and profit. Of the two it is quite possible that the former has greater human values than the latter and is therefore to be encouraged. Should residence rentals for telephones be materially increased it is highly probable that many now enjoying this facility would be obliged to forgo its use. At any rate, it has been the general policy of this Commission to encourage the extension of exchange service into every community and household of the state. This cannot be done except at the lowest possible rates consistent with a fair return to telephone companies. The general installation of exchange telephones also contributes very materially to the

value of the use of toll service. Without the widespread use of exchange stations, the value of toll service would be greatly diminished. This value is an appropriate factor for consideration in fixing toll rates.

Complaint is made because rates in South Dakota are 5 cents higher per message than in North Dakota, Iowa, Minnesota, and Nebraska. We have already called attention to some of the conditions which justify higher rates in this state and need not dwell upon the matter further here. But the main emphasis of the complainants is placed upon the assertion that the state toll rates are unreasonable and discriminatory because they are higher than interstate toll rates. No attempt is made to show that the state rates are unreasonable per se or that they are higher than revenue requirements make indispensable. The fact that the cost of rendering toll service in this state, mile for mile, greatly exceeds interstate service is ignored. It is manifest upon the record that the load carried by South Dakota lines as compared with the interstate Long Lines is very light. The cost of constructing and maintaining telephone line in South Dakota per mile is fairly comparable with that of other states, but is greater per wire carried than for the Long Lines. The investment per message is very much greater. Employees are not kept as busy. This constitutes another cost factor. The Long Lines cover distances up to 3,000 miles with an average haul of 388 miles with very little traffic under 49 miles. The bulk of South Dakota traffic is short-haul business, 71 per cent being under 49 miles. The average revenue per message is 50.6 cents; that of the Long Lines is 181 cents. The Long Lines also lend themselves to certain economies such as the use of carrier circuits and coaxial cable which tends to reduce the cost per circuit mile. These improvements are prohibitive in cost for short hauls and light traffic. This becomes evident when it is remembered that the average number of circuits per route mile for the Long Lines is 283 as compared with only 11 circuits per route mile in this state.

While complainants to some extent rest their case upon a comparison of the toll rates currently in effect in South Dakota and the four other states in which the respondent operates, they rely chiefly upon a comparison of the intrastate rates with the prevailing interstate Long Line rates. Even conceding that such a showing makes out a prima facie case of unreasonableness, prejudice or preference, where nothing more appears in the record, no such prima facie case appears upon this record.

[11, 12] It needs no citation of authority to say that a mere comparison of rates unsupported by any evidence of similarity of operating conditions and costs has little probative value and such declaration of the statute loses much of its force where it is conceded by all parties to the record that the Northwestern Bell Telephone Company operated at a substantial loss during the year 1946 and would now be so operating but for the increases granted in the early part of this year. Based upon the business of 1946, the increase granted, according to the undisputed evidence of record, will result in net earnings of only 1.96 per cent on the book costs and working capital and 3.05 on the depreciated

value of the Company's investment in operating plant in South Dakota. The element of confiscation is therefore present.

Complainants cite in support of their position Turner Creamery Co. v. Chicago, M. & St. P. R. Co. (1915) 36 SD 310, PUR1916A 1083, 154 NW 819. It would seem clear, however, that this case affords little support for their contention as the court was careful to point out that its decision rested upon the fact that the railroad company, with respect to the rates complained of, charged a higher rate than it did for transporting like commodities, under similar conditions, over the same line for greater distances within the state.

The only other case cited is Bell Teleph. Co. of Pennsylvania v. Public Utility Commission (1939) 135 Pa Super Ct 218, 28 PUR NS 266, 5 A2d 410. In this case the plaintiff expressly disclaimed that confiscation was involved and the record showed that the revenues of the Company were as a whole adequate to meet constitutional requirements. The Pennsylvania court sustained the Commission in reducing the intrastate rates involved to the interstate levels. Here, however, operating conditions and other relevant factors were shown to be similar as applied to both intrastate and interstate toll telephone message traffic. But in order that its opinion might not be open to misconstruction as a precedent for future decisions, it qualified its ruling by saying that "The mere fact that rates of one telephone company differ from those of another does not constitute discrimination," and again, "A difference of rates of a telephone company in statewide and nationwide scales, of itself, would not support a finding of discrimination." It also recognized that a difference in rates is justified by a difference in circumstances but said that in the case before it the only difference was that the interstate actually furnished more service than the intrastate lines.

In this connection it might be well to call attention to the ruling of the United States Supreme Court in the case of Louisville & N. R. Co. v. Eubank (1902) 184 US 27, 46 L ed 416, 22 S Ct 277. This involved § 218 of the Constitution of Kentucky which prohibits a common carrier from charging more for a shorter than for a longer haul, and is couched in language almost identical with that employed in SDC 52.0210. Complaint was made that the Railroad Company charged less for freight from Nashville, Tennessee, running north through Franklin, Kentucky, and continuing to Louisville, Kentucky, a distance of 185 miles, than from Franklin to Louisville, and that the distance from Franklin, Kentucky, to Louisville, Kentucky, over the defendant's line, is 134 miles, and is included in and a part of the distance of 185 miles from Nashville to Louisville. Reparation was sought for overcharges. The defendant company demurred to the complaint setting up among other things that the Constitution of Kentucky applied only to railway lines within the state and had no extraterritorial effect and that such rates were not and could not become unlawful under the long-and short-haul laws of Kentucky, and that the effect of such a holding would be to regulate interstate commerce. The state

court granted judgment on the pleadings against the railroad company for $188.81 and costs. Appeal was taken to the United States Supreme Court. This court, in disposing of the case, said that the effect of the state court's decision was to hold that "the state Constitution is not confined to a case where the long and short hauls are both within the state of Kentucky, but that it extends to and embraces a long haul from a place outside of to one within the state, and a shorter haul between points on the same line and in the same direction, both of which are within the state" (184 US at p. 33) and held that the Constitution of Kentucky as so construed was a violation of the Constitution of the United States, as it directly interfered with interstate commerce. The court said further that "The vice of the provision (in state Constitution) lies in the regulation of the rates between points wholly within the state, by the rates which obtain between points outside of and those which are within the state" (184 US at p. 41) and reversed the state court.

The sine qua non of the case is the utter lack of any showing that like is compared with like when the complainants attempt to bottom their case upon a comparison of intrastate toll rates with the Long Line interstate rates. True, one witness did compare the intrastate rates complained of by the prevailing rates in the four adjacent states in which the Company does business, but differences in conditions shown amply justify a rate of 5 cents a call greater in South Dakota than in the other states. The situation would also be quite different if the proposed reduction of toll rates within the state would not drive the income of the Company and its rate of return upon capital investment far below the point of reasonableness.

The case of Mountain States Teleph. & Teleg. Co. v. Public Service Commission (1943) 105 Utah 230, 51 PUR NS 275, 142 P2d 873, is practically on all fours with the case now under consideration. That case involved an application for a reduction of intrastate toll rates based upon allegations of discrimination by reason of the local rates being higher than those in adjoining states and greater than the prevailing interstate rates. Exhibits were offered in evidence by complainants showing that the toll rates prevailing in Utah were higher than in other states and the prevailing interstate rates which were and are based upon the Long Line rates of A. T. & T. Co. usually referred to as the American Company. The Public Service Commission reduced the intrastate toll rates to the level of the interstate rates in the face of a showing by the telephone company that there was a substantial difference in operating conditions between interstate and intrastate telephone toll traffic ([Utah 1942] 45 PUR NS 332). The court on appeal held that a telephone company cannot be deprived of its constitutional right to a fair return on its toll properties by designating the proceeding a discrimination case, and that it having been shown that a difference in operating conditions existed as between intrastate and interstate toll traffic, such difference could not be ignored by the Commission. The order of the Commission was set aside and the case remanded.

[13] Upon the entire record the

Commission finds and concludes that while the legislative provisions which complainants allege have been and are being violated are remedial in character and intended to prevent discriminations as between users of common carrier services, they have reference to preferences and discriminations which are undue, unjust and unreasonable under the existing circumstances. Operating conditions, density of traffic, investment in plant per toll message, revenue per message, geographical position and development with respect to use of toll lines, offsetting factors such as local advantage of businessmen in competing for business outside of state, over-all revenue requirements, etc., all must be weighed and considered. Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418. So weighed and considered, we find and conclude that upon the record the petitions of the Mitchell Chamber of Commerce and the Sioux Falls traffic bureau should be denied.

Let an order be entered accordingly.

GEORGIA PUBLIC SERVICE COMMISSION

D. L. Stokes & Company, Incorporated

v.

Georgia Power Company

File No. 19314, Docket No. 8672-A
October 28, 1947

COMPLAINT *by operator of housing project against change in electric rate schedule applicable to wholesale purchase of electric service by public agencies and institutions for redistribution; dismissed.*

Service, § 169 — Resale of electricity — Housing project.

1. A provision in a rate schedule for the wholesale purchase of electric service by public agencies and institutions for redistribution should not be made applicable to a housing-project owner proposing to furnish electric service to tenants and to include the cost in the rental charge, p. 17.

Service, § 169 — Resale to ultimate consumer.

2. All utility service should be supplied to the ultimate consumer by the utility serving an area, in that way insuring uniform cost of service to all consumers of the same class and insuring, under Commission control, reliable and adequate service, p. 17.

Discrimination, § 64 — Flat charge to tenants — Electricity.

3. The resale of electric service by a landlord to tenants, at a flat charge contained in the rent, represents discrimination between users of electricity

because the same charge is collected irrespective of the amount of use, p. 17.

APPEARANCES: George Brannon, Roy S. Drennan, D. L. Stokes, R. W. Davis, and C. T. Conyers, for D. L. Stokes & Company; Chas. S. Hammond and E. F. Pearce, for Georgia Power Company; N. Knowles Davis, Chief Engineer, and R. B. Alford, Service Engineer, for the Commission.

By the COMMISSION: Electric Rate Schedule "C-5" of Georgia Power Company is applicable to the wholesale purchase of electric service by Federal, state, and municipal agencies and institutions for redistribution. This rate is applicable and has been made available to low rental housing projects constructed by Federal agencies and operated by Municipal Housing Authorities. On March 27, 1947, Georgia Power Company filed a revision in rate schedule "C-5" removing from its applicability clause the former reference to low rental housing projects and D. L. Stokes & Company, Inc. made complaint to the Commission on July 28, 1947, that this revision served to deny the rate to a housing project they contemplated building and that such revision should be canceled. This complaint was heard by the Commission on September 24, 1947.

At the hearing representatives of complainant described their proposed plans with reference to supply of utility services to a large housing project being developed near Piedmont road and Lindbergh drive whereunder it is proposed to furnish electric service to all tenants, the cost thereof to be included in the rental charge. Complainant contended that since the project was beyond the corporate limits of the city of Atlanta the owner of the project would have to provide street lighting and that it would be more economical and beneficial to the complainant if all electric service could be purchased at wholesale. According to the complainant, the added rental charge for electric service in total would be in excess of the actual cost of electric energy purchased at wholesale and the excess would be used to amortize the complainant's investment in the electric distribution system and in the major electrical appliances provided to the tenants.

Representatives of the Georgia Power Company argued that the provision of electric service to the operator of a housing project at wholesale for redistribution in effect made such operator a public utility. They further insisted that Rate Schedule "C-5" had never been made available to any privately owned housing project, its application being restricted entirely to governmental financed and operated low cost housing. They insisted that the revision of Rate "C-5" filed on March 27, 1947, did not alter its applicability to the project in question, since the rate was not applicable prior to the revision, and they stated further that the revision was made simply for the purpose of clarification. When questioned with respect to the availability of their General Service Rate Schedule "B-8," the company replied that, although this rate had been applied to the total electric requirements of single buildings, purchased

through a single meter, the rate had never been applied to the purchase of electric energy for redistribution to a multiple number of buildings. The project contemplated by D. L. Stokes & Company involves the construction of a large number of buildings with relatively few apartments in each building, and D. L. Stokes & Company wishes to purchase the electric requirements of the entire project through one meter. Representatives of the complainant indicated that the separate application of Rate "B-8" to each building would not be of benefit to them. As a matter of fact, separate meters for each individual building would increase the cost of electric energy above the average rate that would result from the individual application of the residential rate of the company to each apartment unit.

[1–3] In the past the Commission has received numerous complaints from tenants who were at the time required to purchase their electrical requirements from their landlord and this situation does not lend itself to efficient regulation by the Commission. It is the opinion of the Commission that all utility service should be provided to the ultimate consumer by the utility serving the area, in that way insuring uniform cost of service to all consumers of the same class. The question of reliability and adequacy of service is also of importance and Commission control over public utilities will insure provision of good service at reasonable cost, which may not be realized if utility service is provided through an intermediate party. It further appears that the provision of electric service at a flat charge (contained in the rent) represents discrimination between the users of the service, because the same charge would be collected irrespective of the amount of use. Furthermore, this method of charging for electric service will undoubtedly encourage wasteful use to an extent that would substantially reduce or even wipe out the margin of profit calculated by complainant on the resale of electric energy. It is the opinion of the Commission, therefore, that this complaint should be dismissed. Wherefore, it is

Ordered that the complaint of D. L. Stokes & Company on the revision of electric service rate Schedule "C-5," and on their inability to purchase their electric requirements through one meter on either rate Schedule "C-5" or rate Schedule "B-8" be and the same is hereby dismissed.

FEDERAL POWER COMMISSION

Re Northern States Power Company

Docket No. IT-6042
June 27, 1947

APPLICATION *by power company for authority to merge and consolidate facilities of municipal electric plant; dismissed for want of jurisdiction.*

Consolidation, merger, and sale, § 4.4 — Jurisdiction of Federal Power Commission — Municipal plant facilities.

The merger or consolidation of the electric distribution system of a municipality into the facilities of an electric company does not constitute a merger or consolidation of the company's facilities subject to the jurisdiction of the Commission "with those of any other person" within the meaning of § 203(a) of the Federal Power Act, 16 USCA § 824b(a).

By the COMMISSION: Northern State Power Company ("Northern States"), a corporation having its principal business office at Eau Claire, Wisconsin, on March 3, 1947, filed and application for an order pursuant to § 203 of the Federal Power Act, 16 USCA § 824b, authorizing the merger and consolidation into its own facilities the electric distribution system of the city of Colby, Wisconsin.

It appears to the Commission that:

(a) Northern States proposes to merge or consolidate into its own facilities the electric distribution system of a municipality, the city of Colby, Wisconsin.

(b) The proposed merger or consolidation does not constitute a merger or consolidation of applicant's facilities subject to the jurisdiction of this Commission "with those of any other person" within the meaning of § 203 (a) of the Federal Power Act.

The Commission finds that:

The proposed merger or consolidation of the electric distribution system of the city of Colby into and with the facilities of Northern States is not subject to the provisions of § 203 of the Federal Power Act.

The Commission *orders* that:

The aforesaid application of Northern States dated March 3, 1947, be and the same hereby is dismissed for want of jurisdiction.

NORTH CAROLINA UTILITIES COMMISSION

Re Piedmont Gas Company

Docket No. 3875
October 1, 1947

APPLICATION *for authority to supplement gas rate schedule with a fuel clause; granted subject to conditions.*

Rates, § 303 — Fuel clause — Propane gas cost.

A gas company operating at a loss may incorporate a fuel clause in its rate schedule, without formal hearing but subject to hearing and review upon complaint, upon a showing that the cost of its propane gas supply has increased substantially since the present rate schedule was approved.

By the COMMISSION: In this case the Piedmont Gas Company comes before the Commission and asks that it be granted authority to supplement its present rate schedule with the following fuel clause:

The rates in this schedule are based on the cost of propane gas at 7½ cents per gallon delivered at company's plant. For each ½ cent increase above 7½ cents per gallon the rate charges above shall be increased 7 cents per thousand cubic foot; likewise for each ½ cent decrease in cost per gallon, below 7½ cents per gallon above rates shall be decreased 7 cents per thousand cubic foot.

In its application the company states that it is now paying 9 cents per gallon for propane gas which cost only 7½ cents per gallon when present schedule was approved causing an increase in cost of about $1,350 per month. It also presented a financial statement showing that in June, last, the company had a deficit of $661.72; in July, a deficit of $1,531.59; and in August, a deficit of $1,154.07 making an aggregate loss for the three months of $3,347.38. This statement shows that but for the profit made on merchandise during this period the net loss would have been $8,806.97.

In view of this loss the company declares that it is facing a financial emergency which should receive immediate attention from this Commission without formal hearing.

It was quite evident to the Commission that a financial emergency does exist in the affairs of the company and that prompt action should be taken to prevent the threat of a shutdown of the plant and further loss as it is quite evident to the Commission that the company cannot continue to operate at the losses being sustained, therefore, the Commission is of the opinion that the company should be permitted to amend its present schedule by including in it the proposed fuel clause without a formal hearing but subject to hearing and review upon complaint, therefore

It is *ordered*, that the Piedmont Gas Company is hereby authorized to

amend its present schedule by incorporating in said schedule the proposed fuel clause, the amended schedule to be effective on billings on and after October 1, 1947.

It is *further ordered,* that this emergency order is subject to change by the Commission upon further investigation and will be modified if such action is deemed necessary without a hearing.

It is *further ordered,* that if upon investigation the Commission finds that the said fuel clause herein allowed produces an excessive charge as a whole or in part, then the amount of excess collected by said Piedmont Gas Company which the Commission finds to be excessive shall be refunded to the consumers in the manner prescribed for in General Statutes, Volume 3, §§ 61–71.

This order is accepted by the said Piedmont Gas Company subject to conditions herein set forth.

UNITED STATES SUPREME COURT

Securities and Exchange Commission

v.

Chenery Corporation et al.

No. 81

Securities and Exchange Commission

v.

Federal Water & Gas Corporation

No. 82
— US —, 92 L ed —, 67 S Ct 1760
October 6, 1947

DISSENTING *opinion by Mr. Justice Jackson, concurred in by Mr. Justice Frankfurter, from decision is Securities and Exchange Commission v. Chenery Corp. (1947) — US —, 91 L ed —, 69 PUR NS 65, 67 S Ct 1575, reversing decision of circuit court of appeals, which reversed order of Securities and Exchange Commission denying participation by officers and directors on a parity with other stockholders in a reorganization.*

Corporations, § 22 — Reorganization — Participation by officers and directors — Dealing in corporation stocks.

Discussion, by dissenting justices of Supreme Court, of the lawfulness of an order of the Securities and Exchange Commission, in a reorganization proceeding under the Holding Company Act, denying to officers and directors equal participation with other stockholders because of their acquisition of stock, on the open market, without violation of law, judicial precedent, regulation, or rule of the Commission, while reorganization proceedings were pending, p. 21.

Appeal and review, § 28.9 — Securities and Exchange Commission order — Deference to administrative experience.

Discussion, by dissenting justices of Supreme Court, of the theory of deference to administrative experience in reviewing an order of the Securities and Exchange Commission denying to officers and directors equal participation with other stockholders in a reorganization, p. 22.

Commissions, § 16 — Administrative discretion — Legal restrictions.

Discussion, in dissenting opinion of Supreme Court justices, of the question of exercising administrative discretion without the sanction of law or in disregard of the law, p. 25.

Mr. Justice JACKSON, dissenting: The court by this present decision sustains the identical administrative order which only recently it held invalid. Securities and Exchange Commission v. Chenery Corp. (1943) 318 US 80, 87 L ed 626, 47 PUR NS 15, 63 S Ct 454. As the court correctly notes, the Commission has only "recast its rationale and reached the same result." Par. 1.[1] There being no change in the order, no additional evidence in the record and no amendment of relevant legislation, it is clear that there has been a shift in attitude between that of the controlling membership of the court when the case was first here and that of those who have the power of decision on this second review.

I feel constrained to disagree with the reasoning offered to rationalize this shift. It makes judicial review of administrative orders a hopeless formality for the litigant, even where granted to him by Congress. It reduces the judicial process in such cases to a mere feint. While the opinion does not have the adherence of a majority of the full court, if its pronouncements should become governing principles they would, in practice, put most administrative orders over and above the law.

I

The essential facts are few and are not in dispute.[2] This corporation filed with the Securities and Exchange Commission a voluntary plan of reorganization. While the reorganization proceedings were pending sixteen officers and directors bought on

[1] For convenience of reference, I have numbered consecutively the paragraphs of the court's opinion, — US —, 91 L ed —, 69 PUR NS 65, 67 S Ct 1575, and cite quotations accordingly.

[2] The facts and the law of the case generally are fully set forth in the first opinion of Mr. Chief Justice Groner of the court of appeals which reversed the Commission's orders (1941) 8 SEC 893, 41 PUR NS 321, 10 SEC 194, 200, 41 PUR NS 361 ([1942] 75 US App DC 374, 44 PUR NS 138, 128 F2d 303) and in his second opinion ([1946] 80 US App DC 365, 62 PUR NS 299, 154 F2d 6) again reversing the Commission's order after it had "recast its rationale."

the open market about 7½ per cent of the corporation's preferred stock. Both the Commission and the court admit that these purchases were not forbidden by any law, judicial precedent, regulation or rule of the Commission. Nevertheless, the Commission has ordered these individuals to surrender their shares to the corporation at cost, plus 4 per cent interest, and the court now approves that order.

It is helpful, before considering whether this order is authorized by law, to reflect on what it is and what it is not. It is not conceivably a discharge of the Commission's duty to determine whether a proposed plan of reorganization would be "fair and equitable." It has nothing to do with the corporate structure, or the classes and amounts of stock, or voting rights or dividend preferences. It does not remotely affect the impersonal financial or legal factors of the plan. It is a personal deprivation denying particular persons the right to continue to own their stock and to exercise its privileges. Other persons who bought at the same time and price in the open market would be allowed to keep and convert their stock. Thus, the order is in no sense an exercise of the function of control over the terms and relations of the corporate securities.

Neither is the order one merely to regulate the future use of property. It literally takes valuable property away from its lawful owners for the benefit of other private parties without full compensation and the court expressly approves the taking. It says that the stock owned by these persons is denied conversion along with similar stock owned by others; "instead, it was to be surrendered at cost plus dividends accumulated since the purchase dates." Par. 5. It should be noted that this formula was subsequently altered to read "cost plus 4 per cent interest." That this basis was less than its value is recognized, for the court says: "That stock had been purchased in the market at prices that were depressed in relation to what the management anticipated would be, and what in fact, was, the earning and asset value of its reorganization equivalent." Par. 24. Admittedly, the value above cost, and interest on it, simply is taken from the owners, without compensation. No such power has ever been confirmed in any administrative body.

It should also be noted that neither the court nor the Commission purports to adjudge a forfeiture of this property as a consequence of sharp dealing or breach of trust. The court says: "The Commission admitted that the good faith and personal integrity of this management were not in question; . . ." Par. 24. And again: "It was frankly admitted that the management's purpose in buying the preferred stock was to protect its interest in the new company. It was also plain that there was no fraud or lack of disclosure in making the purchases." Par. 4.

II

The reversal of the position of this court is due to a fundamental change in prevailing philosophy. The basic assumption of the earlier opinion as therein stated was: *"But before transactions otherwise legal can be outlawed or denied their usual business consequences, they must fall under the ban*

of some standards of conduct prescribed by an agency of government authorized to prescribe such standards." Securities and Exchange Commission v. Chenery Corp. (1943) 318 US 80, 92, 93, 87 L ed 626, 635, 636, 47 PUR NS 15, 23, 63 S Ct 454. The basic assumption of the present opinion is stated thus: "*The absence of a general rule or regulation governing management trading during reorganization did not affect the Commission's duties in relation to the particular proposal before it.*" Par. 13. This puts in juxtaposition the two conflicting philosophies which produce opposite results in the same case and on the same facts. The difference between the first and the latest decision of the court is thus simply the difference between holding that administrative orders must have a basis in law and a holding that absence of a legal basis is no ground on which courts may annul them.

As there admittedly is no law or regulation to support this order we peruse the court's opinion diligently to find on what grounds it is now held that the court of appeals, on pain of being reversed for error, was required to stamp this order with its approval. We find but one. That is the principle of judicial deference to administrative experience. That argument is five times stressed in as many different contexts, and I quote just enough to identify the instances: "The Commission," it says, "has drawn heavily upon its accumulated experience in dealing with utility reorganizations." Par. 9. "Rather, it has derived its conclusions from the particular facts in the case, its general experience in reorganization matters and its informed view of statutory requirements." Par. 19. "Drawing upon its experience, the Commission indicated . . . ," etc. Par. 22. ". . . the Commission has made a thorough examination of the problem, utilizing statutory standards and its own accumulated experience with reorganization matters." Par. 26. And finally, of the order the court says: "It is the product of administrative experience," etc. Par. 29.

What are we to make of this reiterated deference to "administrative experience" when in another context the court says: "Hence, we refuse to say that the Commission, *which had not previously been confronted with the problem of management trading during reorganization,* was forbidden from utilizing this particular proceeding for announcing and applying *a new standard of conduct.*" Par. 17. (Italics supplied.)

The court's reasoning adds up to this: The Commission must be sustained because of its accumulated experience in solving a problem with which it had never before been confronted!

Of course, thus to uphold the Commission by professing to find that it has enunciated a "new standard of conduct," brings the court squarely against the invalidity of retroactive law making. But the court does not falter. "That such action might have a retroactive effect was not necessarily fatal to its validity." Par. 17. "But such retroactivity must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles." Par. 17. Of course, if what these parties did really was condemned

by "statutory design" or "legal or equitable principles," it could be stopped without resort to a new rule and there would be no retroactivity to condone. But if it had been the court's view that some law already prohibited the purchases, it would hardly have been necessary three sentences earlier to hold that the Commission was not prohibited "from utilizing this particular proceeding for announcing and applying a *new standard of conduct.*" Par. 17. (Italics supplied.)

I give up. Now I realize fully what Mark Twain meant when he said, "The more you explain it, the more I don't understand it."

III

But one does not need to comprehend the processes by which other minds reach a given result in order to estimate the practical consequences of their pronouncement upon judicial review of administrative orders.

If it is of no consequence that no rule of law be existent to support an administrative order, and the court of appeals is obliged to defer to administrative experience and to sustain a Commission's power merely because it has been asserted and exercised, of what use is it to print a record or briefs in the case, or to hear argument? Administrative experience always is present, at least to the degree that it is here, and would always dictate a like deference by this court to an assertion of administrative power. Must the reviewing court, as this court does in this opinion, support the order on a presumptive or imputed experience even though the court is obliged to discredit such experience in the very same opinion? Is fictitious experience to be conclusive in matters of law and particularly in the interpretation of statutes, as the court's opinion now intimates, or just in fact finding which has been the function which the court has heretofore sustained upon the argument of administrative experience?

I suggest that administrative experience is of weight in judicial review only to this point—it is a persuasive reason for deference to the Commission in the exercise of its discretionary powers under and within the law. It cannot be invoked to support action outside of the law. And what action is and what is not within the law must be determined by courts, when authorized to review, no matter how much deference is due to the agency's fact finding. Surely an administrative agency is not a law unto itself, but the court does not really face up to the fact that this is the justification it is offering for sustaining the Commission action.

Even if the Commission had, as the court says, utilized this case to announce a new legal standard of conduct, there would be hurdles to be cleared, but we need not dwell on them now. Because to promulgate a general rule of law, either by regulation or by case law, is something the Commission expressly declined to do. It did not previously promulgate, and it does not by this order profess to promulgate, any rule or regulation to prohibit such purchases absolutely or under stated conditions. On the other hand, its position is that no such rule

or standards would be fair and equitable in all cases.[3]

IV

Whether, as matter of policy, corporate managers during reorganization should be prohibited from buying or selling its stock, is not a question for us to decide. But it is for us to decide whether, so long as no law or regulation prohibits them from buying, their purchases may be forfeited, or not, in the discretion of the Commission. If such a power exists in words of the statute or in their implication, it would be possible to point it out and thus end the case. Instead, the court admits that there was no law prohibiting these purchases when they were made, or at any time thereafter. And, except for this decision, there is none now.

The truth is that in this decision the court approves the Commission's assertion of power to govern the matter *without* law, power to force surrender of stock so purchased whenever it will, and power also to overlook such acquisitions if it so chooses. The reasons which will lead it to take one course as against the other remain locked in its own breast, and it has not and apparently does not intend to commit them to any rule or regulation. This administrative authoritarianism, this power to decide without law, is what the court seems to approve in so many words: "The absence of a general rule or regulation governing management trading during reorganization did not affect the Commission's duties . . ." Par. 13. This seems to me to undervalue and to belittle the place of law, even in the system of administrative justice. It calls to mind Mr. Justice Cardozo's statement that "Law as a guide to conduct is reduced to the level of mere futility if it is unknown and unknowable."[4]

V

The court's averment concerning this order that "It is the type of judgment which administrative agencies are best equipped to make and which justifies the use of the administrative process," Par. 29 is the first instance in which the administrative process is sustained by reliance on that disregard of law which enemies of the process have always alleged to be its principal evil. It is the first encouragement this court has given to conscious lawlessness as a permissible rule of administrative action. This decision is an ominous one to those who believe that men should be governed by laws that they may ascertain and abide by, and which will guide the action of those in

[3] The Commission (Feb. 7, 1945) speaking of such a rule appends the following note to its opinion:

"Without flexibility the rule might itself operate unfairly. Limitation to cost appears appropriate here, but would be inappropriate in a case where the cost of the security purchased was in excess of its reorganization value, and in some instances cash payment by the company would not be feasible. In addition, special treatment of any sort might be inappropriate for incidental purchases not made as part of a program in contemplation of reorganization benefits. In this connection, we wish to emphasize that our concern here is not primarily with the normal corporate powers which make it possible for officers and directors to influence the market for their own gain, in the absence of reorganization, by a choice of dividend policies, accounting practices, published reports, and the like. The questions of fairness and detriment here presented arise before us in the context of a capital readjustment. At that point our scrutiny is called for, and that our scrutiny is to be vigilant cannot be doubted. See Appendix to Sen Rep No 621 (74th Cong 1st Sess) on S 2796, at p 58, quoted *supra*."

[4] The Growth of the Law, p. 3.

authority as well as of those who are subject to authority.[5]

I have long urged, and still believe, that the administrative process deserves fostering in our system as an expeditious and nontechnical method of *applying law* in specialized fields.[6] I cannot agree that it be used, and I think its continued effectiveness is endangered when it is used, as a method of *dispensing with law in* those fields.

Mr. Justice FRANKFURTER joins in this opinion.

[5] On the same day the court denied its own authority to recognize and enforce without congressional action, an unlegislated liability much less novel than the one imposed here, and that in the field of tort law which traditionally has developed by decisional rather than by legislative process. The result is to confirm in an executive agency a discretion to act outside of established law that goes beyond any judicial discretion as well as beyond any legislative delegation. Compare United States v. Standard Oil Co. June 23, 1947, — US —, 91 L ed (Adv 1507), 67 S Ct 1604.

[6] See statement before House of Delegates, American Bar Association, 1939. (1939 Proceedings, House of Delegates, XXXV ABA Journal 95). Also see Report as Attorney General to President Roosevelt recommending veto of Walter-Logan Bill—made part of veto message, Vol 86, Part 12, Congressional Record, 76th Congress 3d Sess p 13943.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Milwaukee Gas Light Company

2-U-2440
October 15, 1947; rehearing denied November 13, 1947

APPLICATION *by gas company for emergency rate increase pending determination of permanent rates; denied.*

Rates, § 634 — Emergency increase — Burden of proof.

1. The burden is on the utility applying for an emergency rate increase to show that an emergency exists which makes the increase necessary, p. 30.

Rates, § 631 — Emergency increase — Factors to be considered — Inadequacy of return.

2. The Commission will not grant an emergency rate increase to a utility which alleges that it is not earning a 6 per cent return and that because of low revenue it is unable to refinance bonds and preferred stock, where the return is established at about 2.7 per cent but earnings permit dividends on common stock and it is not definitely established that inability to refinance would impair the utility's ability to serve, p. 30.

Rates, § 630 — Temporary increase — When justified.

3. Temporary rate increases should be reserved for those cases where there is an emergency and where there is some peculiar condition which requires prompt action in order for any action to be effective, p. 30.

Rates, § 631 — Emergency increase — Low rate of return as justification.

4. The fact that a utility's rate of return is less than 6 per cent does not of itself justify the granting of an emergency rate increase, p. 30.

By the COMMISSION: Milwaukee Gas Light Company, Milwaukee, a gas public utility operating in Milwaukee county and portions of Waukesha, Washington, and Ozaukee counties on July 10, 1947, filed an application with the Commission for authority to increase its gas rates. The application asked the Commission to issue a temporary rate increase pursuant to §§ 196.395 and 196.70, Statutes, pending a determination of permanent rates. A notice of investigation and assessment of costs was issued on July 22nd. A notice of hearing was issued on July 29th.

APPEARANCES: Frederic Sammond and Steven E. Keane, Attorneys, both of Milwaukee, for Milwaukee Gas Light Company; Joseph L. Bednarek, Assistant City Attorney, Milwaukee, for city of Milwaukee; John C. Doerfer, City Attorney, West Allis for city of West Allis; Roy R. Stauff, City Attorney, Milwaukee, for city of Wauwatosa; C. R. Dineen, Attorney, Milwaukee, for towns of Lake, Wauwatosa, and Granville; Mrs. Jane F. Moss, Chairman (August 12th) and Mrs. A. B. Vajda, Research Chairman (September 8th), both of Milwaukee, for Milwaukee Women's Committee for Lower Prices; H. T. Ferguson, Chief Counsel, H. J. O'Leary, Chief, Rates and Research Department, George P. Steinmetz, Chief Engineer, and Magnus Andersen, Accounts and Finance Department, of the Commission's staff.

With the oral argument, hearing was completed on the request for a temporary or emergency rate increase. Hearings are still to be held with respect to permanent rates.

Opinion

In docket 2–U–2224, the Commission on May 20, 1947, 69 PUR NS 16, authorized the applicant to increase its rates 5 per cent or approximately $573,000 a year, based upon consumption for the year ended July 31, 1946. The order also revised the geographical zones in the company's rate schedules by regrouping the existing four zones into three zones, with the Milwaukee metropolitan area divided between the first and second zones. The form of rate schedule was also revised to provide a fixed charge, separate from charges for gas consumed, to cover those expenses which are about the same for all customers. The Commission's order was not appealed and, therefore, became final. The new rates and zones, therefore, became effective for service rendered after the first meter reading date subsequent to May 20, 1947. Up to April, 1947, the company had realized $129,000 in twelve months in additional revenue under an automatic change in space-heating and industrial rates which occurs as oil prices go up or down. With the additional revenues, the company was expected to earn between 5.44 per cent and 6.13 per cent on the rate base found by the Commission.

The instant application as originally filed asks additional rate increases of $880,000 a year to provide a 6 per cent return for the 12-month period ending May 31, 1948. The company proposed that this amount be secured by a 9.42 per cent surcharge on all gas bills with such additional revenues to be impounded pending a decision by the Commission on permanent rates so that, if necessary, refunds can

be made to customers of part or all of the increase. The company proposed the same surcharge as a permanent rate until such time as natural gas shall be available. The company alleges its belief that natural gas may be available in two or three years.

At the first session of hearing, the company amended its application to request that the surcharge be 12.42 per cent of all bills until December 1, 1947, and 13.33 per cent thereafter.

The principal reasons for the additional increase are wage increases granted employees and higher costs of materials, particularly coal and oil used in production of gas. The company alleges that it was planning to refinance preferred stock on which dividends of 7 per cent are paid and bonds on which 4½ per cent interest is paid but that it had to suspend its refinancing because it could not go into the investment market with its present low earnings. A rate of return of 2.73 per cent is now being earned by the company on a rate base of $24,318,855 as of June 30, 1947. A surcharge of 12.42 per cent would amount to about $1,160,000 a year, while a 13.33 per cent surcharge would amount to about $1,245,000 a year.

The company estimates that for the twelve months ending June 30, 1948, with present and anticipated expenses including new wage rates to be effective December 1st, there will be $178,025 of net income, of which $140,000 would pay dividends on preferred stock, leaving $38,025 for dividends on common stock. In the twelve months ended July 31, 1947, common stockholders received dividends of $180,000. More than 99 per cent of the common stock of applicant is held by American Light and Traction Company.

On a book-value rate base, the rate of return of the company has ranged from a high of 8.96 per cent in 1930 to 4.28 per cent in 1946 for a weighted average of 5.98 per cent for the seventeen years. In only two years, 1935 and 1946, was the company's rate of return below 5 per cent. Through the first four years of the period, the lowest rate of return was 7.28 per cent.

Although the company's present rate of return is 2.73 per cent on a rate base computed in the manner that the Commission computed a rate base in its May 20th order, *supra*, the company anticipates a 2.96 per cent rate of return for 1947 at the present level of expenses. The increase in rate of return is expected to result from higher revenues due to more customers and increased consumption.

To sum up: Applicant urges that a temporary rate increase be granted pending establishment of permanent rates on the ground that an emergency exists because (1) the company is not earning a 6 per cent return but is earning slightly less than 3 per cent; (2) the company's expenses for wages and materials are increasing and after December 1st may reduce the rate of return; and (3) the company is unable, with its present earnings, to refinance its bonds and preferred stock.

Two statutes apply to the request for a temporary rate increase, namely, §§ 196.70 and 196.395. Section 196.70 reads:

"Temporary Alteration or Suuspension of Rates (1) The Commission may by order when deemed by it necessary to prevent injury to the business or interests of the people or any

public utility in case of any emergency to be judged of by the Commission, temporarily alter, amend, or with the consent of the public utility concerned, suspend any existing rates, schedules and order relating to or affecting any public utility or part of any public utility.

(2) Such order shall apply to one or more of the public utilities in this state or to any portion thereof as may be directed by the Commission, and shall take effect at such time and remain in force for such length of time as may be prescribed by the Commission."

Section 196.395 reads:

"Test, Conditional, Emergency, and Supplemental Orders; Waiver of Conditions in Orders. The Commission may issue orders calling for a test of actual results under the requirements prescribed by such order, during which test period the Commission may retain jurisdiction of the subject matter. The Commission is empowered to issue conditional, temporary, emergency, and supplemental orders. Where an order is issued upon certain stated conditions any party acting upon any part of such order shall be deemed to have accepted and waived all objections to the condition contained in such order."

The first quoted section was a part of the state utility law as originally enacted in 1907 and was patterned after § 195.10 of the railroad law which gives the Commission power "when deemed by it necessary to prevent injury to the business or interests of the people or railroads of this state in consequence of interstate rate wars, or, in case of any other emergency to be judged of by the Commission, to temporarily alter, amend, or with the consent of the railroad company concerned, suspend any existing passenger rates, freight rates, schedules, and orders on any railroad or part of railroad in this state."

Section 196.395 was enacted in its present form in 1931 as a part of a general revision of the state utility law. The state supreme court in Madison R. Co. v. Railroad Commission, 184 Wis 164, PUR1924D 379, 198 NW 278, had held in 1924 that the Commission had no power to issue conditional orders. The first use of powers under such statute was made by the Commission in the statewide investigation of the Wisconsin Telephone Company on June 30, 1932, when a temporary rate reduction in the company's rates was ordered (2 Wis PSC 106, 247, PUR1932D 173). The state supreme court decision on this and subsequent rate orders in the same case was one of three precedents cited by applicant. The decision in the telephone case, Wisconsin Teleph. Co. v. Public Service Commission (1939) reported in 232 Wis 274, 30 PUR NS 65, 287 NW 122, 593, has no applicability in the present proceeding because a rate reduction was attempted on the Commission's own motion without the consent of the utility before hearings had been completed.

Applicant also cited La Crosse v. Railroad Commission, 172 Wis 233, PUR1921A 22, 178 NW 867, and Smith v. Railroad Commission, 169 Wis 547, PUR1919F 75, 173 NW 312. These cases may be distinguished from the present case. In the La Crosse Case, the earnings of the gas utility following World War I had fallen off to a point where available

income was inadequate even for depreciation requirements. The Railroad Commission stated (23 Wis RCR 292, 296):

". . . No appeal was ever taken from the first emergency order giving a surcharge of 10 cents. If emergency was now found not to exist in relation to the present proceeding, the lawful rates would probably be the old rates of the company with a 10-cent surcharge. Had this rate been in effect during the five months' period, the amount available for interest and depreciation would have been $1,492.02, considerably less than the requirement for depreciation alone."

In the Smith Case, *supra,* the court held that there was no emergency even though the street railway was operating at a loss. The Railroad Commission's order was sustained not on the ground that it was an emergency order but that there had been full hearing so that the order was valid as a permanent rate order.

An emergency is defined (20 CJ 499) as "any event or occasional combination of circumstances which calls for immediate action or remedy; an unforeseen occurrence or combination of circumstances which calls for an immediate action or remedy; a sudden or unexpected occasion for action; a sudden or unexpected happening; any case of casualty or unavoidable accident; exigency; pressing necessity; specifically, a perplexing contingency or complication or circumstances."

[1, 2] The burden is on applicant to show that an emergency exists. The applicant has failed in this case to present proof of an emergency. It is earning approximately half the return it claims it is entitled to earn; its earnings are sufficient to permit dividends on common stock; it has failed to show that it cannot refinance in the present investment market; it has failed to show that even if it could not refinance in the present investment market, that such failure would impair its ability to continue the rendition of adequate service to the public.

[3, 4] If the Commission were to grant the temporary relief as requested in this case, it would in effect adopt a policy whereby, upon a showing of any utility that its rate of return upon a rate base, such as the one here assumed, is less than 6 per cent, temporary rate increases would have to be given. Temporary rate increases should be reserved for those cases where there is an emergency or where there is some peculiar and temporary condition which requires temporary action in order for any action to be effective at all. The Commission does not regard a profit of less than 6 per cent on the rate base here assumed as constituting, per se, an emergency situation.

The Commission finds: That no emergency exists with respect to Milwaukee Gas Light Company which makes necessary any temporary alteration of existing rates of said company to prevent injury to the business of the company or the interests of the people.

The Commission concludes: That the application of the Milwaukee Gas Light Company for an emergency or temporary rate increase should not be granted.

ORDER

It is therefore *ordered:*

That the application herein of Mil-

waukee Gas Light Company for a temporary or emergency increase in rates for gas service be and hereby is denied.

MICHIGAN PUBLIC SERVICE COMMISSION

Re Michigan Gas & Electric Company

D-3616-47.1
October 15, 1947

PETITION *by gas and electric company for authority to increase rates; approved.*

Rates, § 57 — Commission jurisdiction — Municipal utilities.

1. The Commission has jurisdiction over the rates of utilities operating within municipalities where no valid contract or franchise exists which would divest it of jurisdiction, p. 31.

Rates, § 60 — Commission jurisdiction — Effect of contract with municipality.

2. A contract between a municipality and a gas and electric utility does not divest the Commission of jurisdiction over utility rates where the city council resolution affirming the contract specifically recognizes the Commission jurisdiction and authorizes the sending of the rate schedule to the Commission for approval, p. 31.

By the COMMISSION: Petition was filed on August 19, 1947, by Michigan Gas and Electric Company requesting authority to increase its rates for gas service in the cities of Ishpeming, Marquette, and Negaunee. This matter was brought on and heard September 16 and 17, 1947.

Petitioner presented testimony and exhibits indicating that the present rates for gas service are inadequate and should be revised.

[1, 2] It was contended by the cities of Ishpeming and Negaunee, as protestants, that this Commission did not have jurisdiction over the matter of regulating rates of utilities in the cities of Ishpeming, Marquette, and Negaunee. The testimony, arguments, and briefs of counsel have been carefully considered. A franchise relating to the city of Ishpeming and designated as Exhibit "A" was received in evidence. This gave H. C. Higgins and his associates permission to erect gas and electric light works in said city, but it was not made to appear that the applicant is operating under said franchise.

The only claim of the existence of a contract was a purported Resolution of the common council of the city of Ishpeming introduced as Exhibit B-3. This Resolution, if it were a contract, militates against the contention of the city to the extent of the following provisions quoted therefrom:

"Whereas, it is necessary for the

common council of the city of Ishpeming to approve the proposed rates for gas and electric rates in order to have the proposed rates submitted to the Public Utilities Commission of the state of Michigan for its approval, before the same can become effective; and

"Be it further resolved, that this common council urge the Public Utilities Commission of the state of Michigan to approve and authorize the adoption of the above rates for the city of Ishpeming and that it issue an order confirming said rates and put said rates into effect as of July 1, 1927, or as soon thereafter as possible; and

"Be it further resolved, that the recorder of the city of Ishpeming is hereby authorized to send to the Public Utilities Commission of the state of Michigan a certified copy of the minutes of this meeting held in the council chamber in the city of Ishpeming on July 16, 1927."

It is apparent from the language of this resolution that the jurisdiction of the Commission was recognized, and we find that no valid franchise or contract exists with reference to the fixing of rates which divests this Commission of jurisdiction.

This Commission finds that no valid contract or franchise exists with reference to rates in the city of Negaunee which divests this Commission of jurisdiction.

The record is silent upon the existence of any franchise or contract with reference to rates in the city of Marquette which divests this Commission of jurisdiction.

The evidence shows that, since the adoption of the Higgins Franchise Ordinance, the gas plant formerly serving the city of Ishpeming as well as that formerly serving the city of Negaunee is no longer in use and that the cities of Ishpeming, Marquette, and Negaunee are all served by a gas plant of petitioner located in the city of Marquette.

The Commission having carefully considered the matter before it and being advised in the premises finds that it does have jurisdiction over the matter of rates for gas service in the cities of Ishpeming, Marquette, and Negaunee, and that rates proposed by petitioner should be approved.

Therefore, it is *ordered* that Michigan Gas and Electric Company forthwith prepare and file with this Commission revised rate sheets that conform substantially with the proposed sheets attached to the petition, which sheets are by reference made a part of this order.

It is *further ordered* that the rates hereby approved shall be effective forthwith.

It is *further ordered* that the approval herein given is without prejudice to the power of the Commission at any time on its own motion or on petition of any inerested party, to inquire into and investigate the rates, charges, practices, and services hereby approved.

The Commission retains jurisdiction of the matter herein contained and reserves the right to issue such further order or orders as the circumstances may require.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

$92,900,000 Program Planned By Cleveland Elec. Illum.

A CONSTRUCTION program aggregating $92,900,000 has been undertaken by the Cleveland Electric Illuminating Company to meet expanded needs of its system. Of this total $59,075,000 represents the unexpended portion of work previously authorized and $33,825,000 represents newly projected work.

Largest expenditure under the pending program is $26,100,000 for extension of the Avon station, while largest item in the newly authorized schedule includes $8,300,000 for an additional turbo-generator unit and associated equipment for installation at Lake Shore "A" plant.

New Lightweight Pumps for Utility Company Use

CLIMAXING a protracted study of utility company requirements in portable pumps, a series of four self-priming aluminum centrifugals has been introduced by Marlow Pumps, 201 Greenwood avenue, Ridgewood, New Jersey.

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A special bulletin for utility company buyers is now in preparation.

"How to Manage by Exception"

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Idaho Power Company Expands Capacity

EXPANSION program of the Idaho Power Company to be completed by 1951 at an estimated cost of $50,000,000, will add 185,000 kilowatts of new hydroelectric generating capacity, of which the 16,500 kilowatt plant at Upper Salmon, just opened, is the first step.

In addition the program calls for the addition of 580 miles of high voltage transmission lines and 2,500 miles of low voltage distribution lines, including 2,250 miles of rural electric lines.

To meet future load demands Idaho Power Company has planned the construction of a new hydroelectric development in the southwestern part of the state. This project calls for an installation of approximately 75,000 kilowatts, to cost an estimated $13,000,000. It is expected to be completed by 1951.

American Gas & Electric to Extend Rural Lines

THE executive committee of the American Gas & Electric System has approved plans for 1948 for its affiliated companies which involve the extension of electric service to more than 31,000 additional rural customers in areas now served by the system.

An expenditure of $12,796,000 will be required to complete the 4,700 miles of line and provide incidental facilities necessary to serve these new customers, Philip Sporn, president, announced.

From May, 1945, to the end of 1947, the system built 11,266 miles of new line and added 87,000 rural customers to these and existing lines. When the 1948 program is completed, the system will be serving about 275,000 farm and rural customers through approximately 37,000 miles of rural lines.

Delaware Power & Light May Expand Program

THE $30,000,000 construction program of the Delaware Power & Light Company during the years 1948 through 1952 may be enlarged by the construction of a power plant in the Wilmington area which has been under consideration for several years. It is expected that expenditures during 1948 and 1949 may total $20,000,000.

Principal construction items during the next two years include the completion of two generating units of 15,000 kilowatts and the addition of a 30,000 kw. unit at the Vienna, Mary-

land, steam plant at a total cost of $11,300,000, of which $5,755,000 will be spent during 1948 and 1949.

New Appointments

General Electric Company

A general superintendent and managers of production, engineering, and sales for General Electric's transformer and allied product divisions have been appointed.

H. R. McKean was appointed general superintendent; J. B. Dunn, production manager; F. F. Brand, manager of engineering; and H. F. McRell, manager of sales.

These new appointments are in connection with General Electric's newly-formed integrated operating units in the apparatus department. The transformer and allied product divisions are responsible for the development, design, manufacture, and sales direction of power and distribution transformers, capacitors, lightning arresters, cutouts, and feeder voltage regulators.

I-T-E Circuit Breaker Company

The appointment of J. Fred Getz to the position of sales manager of The I-T-E Circuit Breaker Company with complete control over the sale of switchgear products, has been announced. Mr. Getz has been with I-T-E since 1944, serving in the various positions of manager, Washington, D. C. office; manager, switchgear sales in the home office; and lately, assistant to the president.

Before joining I-T-E, Mr. Getz was a member of the General Electric Company for eight and one-half years.

From 1943 to 1944 Mr. Getz was sales manager of the Roller-Smith Company.

Construction Loans Announced

CONSTRUCTION loans — chiefly for distribution lines, system improvements or new or additional generating capacity—recently were made to the following enterprises by the Rural Electrification Administration:

San Luis Valley Rural Electric Coöperative, Monte Vista, Colo., $375,000.

Southern Pine Electric Power Association, Taylorsville, Miss., $1,090,000.

Southwestern Electric Coöperative, Clayton, N. M., $550,000.

James River Valley Electric Association, Aberdeen, S. D., $475,000.

Floyd County Rural Electric Coöperative, Floydada, Tex., $300,000.

Lyntegar Electric Coöperative, Tahoka, Tex., $334,000.

Yampa Valley Electric Association, Steamboat Springs, Colo., $440,000.

Y-W Electric Association, Yuma, Colo., $608,000.

Holy Cross Electric Association, Eagle, Colo., $260,000.

Butler County Rural Electric Coöperative, Allison, Iowa, $340,000.

Sheridan-Johnson Rural Electrification Association, Sheridan, Wyo., $210,000.

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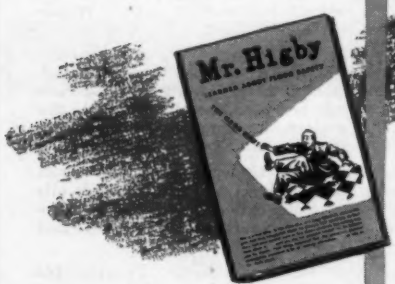

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